TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 127

THE EVANSVILLE AND BOWLING GREEN PACKET COMPANY, APPELLANT,

vs.

CHERO COLA BOTTLING COMPANY, NATIONAL PRODUCE COMPANY, RAPHAEL BROTHERS DRY GOODS COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA

FILED JULY 7, 1924

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INDEX

	Original	Print
Record from the district court of the United States, district of Indiana	1	1
Caption (omitted in printing)	1	1
Motion and order referring petition to commissioner	1	1
Petition	3	2
Report of commissioner	10	5
Testimony of Walter W. Leiter (omitted in printing)	12	
Isidor Kahn (" " ")	14	
S. C. Hornbrook (" " ")	16	
John Archbold (" " ")	25	
D. G. Morris (" " ")	31	
Jeff Williams (" " ")	35	
Homer McDonald (omitted in printing)	49	
Order approving report of commissioner and directing issuance of monition and appointing commissioner to take proof of claims	53	6
Exceptions of Chero Cola Bottling Co. and others to petition	57	8
Exceptions of Boetticher & Kellogg Co. to petition	60	9
Exceptions of The Heldt Co. to petition	64	11
Order overruling exceptions	67	12
Order to answer complaint (omitted in printing)	69	
Answer	70	12
Answer of Boetticher & Kellogg Co.	82	17
Answer of The Heldt Company	92	22

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 24, 1925

	Original	Print
Report of Commissioner Charles E. Harman	102	26
Order directing monition to issue and enjoining suits and appointing commissioner to receive proof of claims.....(omitted in printing)..	107	
Order on petition of Ohio Valley Seed Company for extension of time.....(omitted in printing)..	110	
Notice of filing of bonds.....(omitted in printing)..	112	
Bonds for costs.....(omitted in printing)..	114	
Petitioner's exceptions to commissioner's report	121	28
Order continuing cause	122	29
Judgment	123	30
Order allowing appeal	124	30
Petition for appeal	126	31
Assignment of errors	127	31
Notice of appeal	129	33
Bond on appeal.....(omitted in printing)..	131	34
Indemnifying bond.....(omitted in printing)..	132	34
Judge's certificate	133	34
Memorandum opinion	134	34
Transcript of evidence	141	35
Caption	141	35
Testimony of James Edward Cox	142	35
Exhibits 1 and 2—Pictures of wharf boat	149a	38
Testimony of John C. Wallace	160	41
Charles B. Gilmore	213	59
Thomas A. Williams	224	63
Jeff H. Williams	268	77
Richard Willett	284	82
Edgar J. Lilly	293	86
George H. Wilson	312	92
Dan O'Sullivan	327	98
S. C. Hornbrook	338	102
Exhibit 3—Weather Bureau monthly meteorological summary, May, 1922	341a	103
Testimony of Roy E. Sargent	342	103
George Kohl	351	107
Harry Hummell	357	109
George A. Rickich	369	114
R. H. Williams	375	116
Oscar Bedecker	387	120
F. A. Dickman	394	123
Harry Rafael	401	125
John C. Wallace	404	126
Interrogatories propounded by respondents	410	129
Answers to interrogatories	415	131
Colloquy between court and counsel	421	133
Judge's certificate to transcript of evidence	424	134
Praecipe for transcript of record	426	135
Citation and service.....(omitted in printing)..	430	136
Clerk's certificate	431	136
Statement by appellant of points to be relied upon and designation of parts of the record to be printed	432	136

[fol. 1] CAPTION—Omitted

IN UNITED STATES DISTRICT COURT

8377

In the Matter of the Petition of THE EVANSVILLE AND BOWLING GREEN PACKET COMPANY for Exemption from and Limitation of Its Liability as Owner of the Evansville Wharfboat.

MOTION AND ORDER REFERRING PETITION TO COMMISSION—January 19, 1923

Be it remembered that heretofore, to wit: at the November Term of said Court, on the 19th day of January, 1923, before the Honorable Albert B. Anderson, Judge of said Court, the following proceedings in the above entitled cause were had, to wit:

Upon reading and filing the petition for limitation of liability filed herein by the above named petitioner on the nineteenth day of January, 1923, and particularly the averment contained therein which is verified by the affidavit of James Edward Cox as to the value of the Evansville Wharfboat immediately after the sinking thereof, on the [fol. 2] 14th day of May, 1922, including pending freight, if any.

Now, on motion of Welman & Darby, Proctors for the petitioner, it is

Ordered that said petition be referred to Charles E. Harman, as a Commissioner of this court to take proofs and report to the court with all convenient dispatch his conclusions as to the amount or value of the petitioner's interest in the Evansville Wharfboat and her pending freight, if any, for the purpose of limitation of liability, as such value was immediately after the sinking of said Wharfboat on the 14th day of May, 1922, and that the Commissioner present to the court the proofs adduced before him, and report his finding and conclusion thereon; and it is further

Ordered that the amount or value of the petitioner's interest in said Evansville Wharfboat and her pending freight, if any, when finally appraised and approved by the court, be paid into the Registry of this court by the petitioner to abide the event of this proceeding, or at the option of the petitioner, that a stipulation be filed by the petitioner in such appraised amount, providing for the payment thereof into court with interest at the rate of six per cent per annum from the date of said stipulation and costs, whenever the same shall be ordered; and the said stipulation shall be with sufficient sureties or an approved corporate surety.

Said petition is as follows:

[fol. 3] In United States District Court for the District of Indiana. In Admiralty

No. 8377

In the Matter of the Petition of The Evansville and Bowling Green Packet Company for Exemption from and Limitation of Its Liability as Owner of the Evansville Wharfboat.

Petition

To the Honorable Albert B. Anderson, Judge of the United States District Court for the District of Indiana:

The petition of The Evansville and Bowling Green Packet Company, owner of the Evansville Wharfboat, in a cause of action, civil and maritime, respectfully shows:

First. Your petition- is and was at all times mentioned herein a corporation duly organized and existing under and pursuant to the laws of the State of Indiana, having its principal office at the City of Evansville, Indiana, and does now and did at all times mentioned herein own and operate a line of steamboats for the carriage of cargo and passengers between the port of Evansville in the State of Indiana upon the Ohio River and various points along Green River and Barren River in the State of Kentucky.

Second. That on the 14th day of May, 1922, and prior thereto said petitioner owned and operated a vessel known as the Evansville Wharfboat, which vessel was then being used by this petitioner in said port of Evansville in such manner as to form a communication between the land and the vessels loading or unloading, or receiving and landing passengers and freight at said port. That said vessel known as the Evansville Wharfboat was so constructed as to float [fol. 4] upon the Ohio River in like manner as other vessels and was so constructed as to be capable of being removed from place to place so as to enable steamboats belonging to this petitioner and belonging to others to land and receive or discharge their cargoes at any stage of the water of said Ohio River; and in the manner aforesaid said Wharfboat was then being used in aid of commerce and navigation upon the Ohio River, one of the inland navigable streams of the United States.

Third. That early in the morning of the 14th day of May, 1922, and between the hours of three and four o'clock A. M. of said date the said Evansville Wharfboat and without the privity or knowle-ge of the owner thereof, this petitioner, and while in charge of a competent watchman and being at the time loaded with merchandise sprang a leak in the hull of said Wharfboat and began taking in water in such a large quantity as to make it impossible to keep the Wharfboat afloat through the use of pumps or otherwise. That said wharfboat within a period of thirty minutes sank and in a depth of

water where the boat and its contents were almost entirely submerged.

Fourth. That the sinking of said wharfboat resulted in the loss and destruction of a large portion of the cargo which was then on said boat and resulted in the damage to a large portion of the merchandise or cargo which was not wholly lost or destroyed; and the sinking of said wharfboat and the loss, destruction and damage to the merchandise and cargo thereon were occasioned done and incurred without fault or privity or knowledge of this petitioner, and without the fault of any of its officers, agents or servants.

Fifth. That claims have been made against this petitioner by various owners of merchandise which was lost, destroyed or damaged in the sinking of such wharfboat, the number of said claims already asserted against this petitioner being more than sixty; that a suit has been filed against this petitioner in the Superior Court of [fol. 5] Vanderburgh County, Indiana, by the Boetticher & Kellogg Company of Evansville, Indiana, and further separate suits are now threatened upon the part of the more than sixty other claimants.

Sixth. That the value of the vessel known as the Evansville Wharfboat immediately after the sinking aforesaid was less than Five Thousand Dollars ($5,000.00); that there was no freight earned for the transportation of the merchandise and cargo on board said wharfboat at the time of the sinking thereof; that the entire aggregate value of the interest of said petitioner in said Wharfboat and her pending freight as such value was immediately after the sinking of said vessel does not exceed the sum of Five Thousand Dollars ($5,000.00).

Seventh. Your petitioner the Evansville and Bowling Green Packet Company, as the owner of the vessel known as the Evansville Wharfboat claims exemption from liability for the loss, damages, injuries and destruction occasioned or incurred by the sinking of said Wharfboat and claims exemption from liability for the claims or damages that have been made or that hereafter may be made on account of the loss, destruction or damage to the merchandise or cargo or any part thereof which was aboard said Wharfboat at the time of the sinking thereof. Said petitioner further claims the benefit of the limitation of liability provided in Sections 4283, 4284 and 4285 of the Revised Statutes of the United States and the various statutes supplementary thereto and amendatory thereof; and to that end said petitioner is ready and willing to give a stipulation with a sufficient surety or sureties for the payment into court of the amount or value of the petitioner's interest in the vessel known as the Evansville Wharfboat and her pending freight, if any, whenever the same shall be ordered by this court as provided by the aforesaid statutes and by the admiralty rules of the United States Supreme Court and by the rules and practice of this court.

[fol. 6] Eighth. That all and singular the premises herein are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, petitioner prays:

1. That this court will cause due appraisement to be made of the amount or value of the petitioner's interest in the vessel known as the Evansville Wharfboat and of her pending freight, if any.

2. That the court make an order directing the petitioner to file a stipulation with surety to be approved by the court for the payment into court of the amount of the petitioner's interest, whenever the court shall so order.

3. That the court make an order directing the issuance of a monition to all persons claiming damages for all and any loss, damage or injury caused by or resulting from the sinking aforesaid and damages consequent therefrom, citing them to appear before a Commissioner to be named by the court in said order, and make due proof of their respective claims, and also to appear and answer the allegations of this petition according to the law and practice of this court at or before a certain time to be fixed by the monition.

4. That the court make an order directing that on the giving of such stipulation as may be determined to be proper, an injunction shall issue restraining the prosecution of any proceedings already begun to recover for damages arising out of the sinking aforesaid and the commencement or prosecution hereafter of any suit, action or legal proceeding of any nature or description whatsoever, except in [fol. 7] the present proceeding, against the petitioner in respect of any claim or claims arising out of the aforesaid sinking.

5. That the court in this proceeding adjudge that the petitioners are not liable to any extent for any loss, damage or injuries, nor for any claim whatsoever, in any way arising out of, or in consequence of, the sinking above described; or if the petitioners shall be adjudged liable, then that their liability be limited to the amount or value of the petitioner's interest in the vessel known as the Evansville Wharfboat and her pending freight, if any, and that the moneys paid or secured to be paid as aforesaid be divided pro rata among such claimants as may duly prove their claims before the Commissioner hereinbefore referred to, saving to all parties any priorities to which they may be legally entitled, and that a decree may be entered discharging the petitioners from all further liability.

6. That the petitioners may have such other or further relief as the justice of the cause may require.

Welman & Darby, Proctors for Petitioner.

[fols. 8 & 9] Jurat showing the foregoing was duly sworn to by James Edward Cox; omitted in printing.

[fol. 10] IN UNITED STATES DISTRICT COURT

[Title omitted]

REPORT OF COMMISSIONER

To the Honorable Albert B. Anderson, Judge of said Court:

The report of Charles E. Harman, to whom the above matter was referred as Commissioner, with direction to hear evidence and make report thereon, respectfully shows:

1. After notice duly given by posting at the Evansville Wharfboat and by publication in the Evansville Journal, of the time and place fixed for the holding of such hearing, said commissioner heard testimony at 2 o'clock, P. M. on January 28, 1923, at the Federal Court Room, in Evansville, Indiana.

He appointed Helen S. Miller reporter to take all testimony in shorthand and transcribe the same in typewritten form, transcript of which is annexed hereto and made a part hereof.

2. It appeared without contradiction that the said wharfboat sank on May 14, 1923, in the waters of the Ohio River, at a point near shore, and remained partially submerged. That at the time of sinking, she was the property of the petitioner herein.

3. It appears from the evidence (Rec. of Ev. pp. 24-25) and is uncontradicted, that all witnesses who testified as to the value of the wharfboat at the time immediately after sinking were disinterested witnesses.

4. Testimony as to the value of said wharfboat immediately after her sinking varies, the highest valuation fixed by any witness being $3,000.00 and the lowest $1,000.00.

The witness Leiter (p 2 Ev.) fixes the value at $3,000.

The witness Hornbrook (p. 6, Ev.) fixes the value at $1,500.

The witness Archbold (p. 15, Ev.) fixes value at $1,200 to 1,500.

The witness Morris (p. 21, Ev.) fixes value at $1,000.

The witness Leiter, whose estimate of $3,000 was highest, does not show a very intimate knowledge of boats, other than as a clerk thereon. Still, we feel that a certain measure of consideration should be given his testimony.

[fols. 11-52] It also appears that the knowledge of all other witnesses, with the exception of Hornbrook, as to the value of boats was gained by their experience quite awhile previous to the time in question (See pp. 15 and 22 Ev.).

However, all the witnesses were without doubt, men of long experience upon the river and with river craft, and we do not feel that the opinion of any of them can be entirely ignored.

From the testimony adduced, considering it as a whole, we are driven to one conclusion, namely, that the value of the wharfboat in question, immediately after its sinking, was just about its value as used for second hand lumber, plus whatever advantage, if any,

there may have been in the fact that it was assembled in one place, in the Ohio River, near shore.

Considering that the values of all lumber had materially increased since the times in which the majority of low estimate witnesses testified to their experience, we feel that a very reasonable value for the wharfboat would be $2,000.00 at a time immediately after its sinking.

5. As to the value of the interest of the petitioner in her pending freight, at said time, the only evidence in the record which we feel is of assistance upon the subject is of inbound freight charges in the amount of $5.00 and outbound freight charges in the amount of $7.00 (p. 33 Ev. b. p.), in all, an amount of $12.00.

Certain testimony concerning policies of insurance and insurance collected was brought out in the record, but we do not conceive that it can be considered for the purpose of these findings.

6. Therefore, your Commissioner, acting under and pursuant to the order of reference herein that he "take proof and report to the court with all convenient dispatch his conclusions as to the amount or value of the petitioner's interest in the Evansville Wharfboat and her pending freight, if any, for the purpose of limitation and liability, as such value was immediately after the sinking of said wharfboat on the 14th day of May, 1922," now finds that at said time the reasonable value of the petitioner's interest at said time in said wharfboat was $2,000.00, and in her pending freight was $12.00, or a total amount of $2,012.00.

7. Copy hereof is being furnished to all counsel interested.

Respectfully submitted, Charles E. Harman, Commissioner as Aforesaid.

Feby. 21, 1923.

[fol. 53] IN UNITED STATES DISTRICT COURT

ORDER APPROVING REPORT OF COMMISSIONER AND DIRECTING ISSUANCE OF MONITION AND APPOINTING COMMISSIONER TO TAKE PROOF OF CLAIM—Feb. 24, 1923.

A petition having been filed herein on the 19th day of January, 1923, by the Evansville and Bowling Green Packet Company, a corporation of Evansville, Indiana, owner of the Evansville Wharfboat, claiming the benefits of the limitation of liability provided for in the Third and Fourth Sections of the Act of Congress entitled "An Act to limit the liability of ship owners and for other purposes" passed March 3rd, 1851, now embodied in Sections 4283, 4284 and 4285 of the United States Revised Statutes and the statutes supplemental thereto and amendatory thereof, and also contesting its liability independently of the limitation of liability claimed under said Act for any and all loss, damage or injury or destruction resulting from the sinking of said Evansville Wharfboat on the 14th day of May, 1922;

and said petition having also stated the facts and circumstances on which such exemption from and limitation of liability is claimed; and

On reading and filing the report of Charles E. Harman, Commissioner, heretofore appointed to take proof as to the amount or value of petitioner's interest in the Evansville Wharfboat and her pending freight, if any, from which report the Commissioner concludes that the amount or value of the petitioner's interest in the Evansville Wharfboat was Two Thousand Dollars ($2,000.00) and that her pending freight was Twelve Dollars ($12.00), the two aggregating Two Thousand Twelve Dollars (2,012.00), and the petitioner hav- [fol. 54] ing this day filed and presented to the court a stipulation with the Globe Indemnity Company of New York, N. Y., as corporate surety thereon, for the payment into court of Two Thousand Twelve Dollars ($2,012.00) with interest at the rate of six per cent per annum from the date of said stipulation and costs, whenever the same shall be ordered;

Now, on motion of Welman & Darby, proctors for said petitioner, it is

Ordered that the report of Charles E. Harman, Commissioner be and it is hereby approved and affirmed and the Court now fixes the sum of Two Thousand Twelve Dollars ($2,012.00) as the amount or value of the petitioner's interest in said Evansville wharfboat including pending freight as such value was immediately after the sinking of said wharfboat on the 14th day of May, 1922; and

It is further ordered that the said stipulation given by the petitioner with the Globe Indemnity Company of New York, N. Y., an approved corporate surety, be and it is hereby approved and confirmed; and

It is further ordered that a monition issue out of and under the seal of this court against all persons claiming damages for any and all loss, damages, claims or demand resulting from the sinking of said Evansville wharfboat which occurred on the 14th day of May, 1922, citing all such persons to appear before this court and file and make proof of their respective claims on or before the 28th day of March, 1923 and Charles E. Harman of Evansville, Indiana is hereby appointed Commissioner before whom proof of all claims which shall be presented in pursuance of said motion shall be made, subject to the right of any person interested to question or controvert said claims, and with liberty also to any claimant who shall [fols. 55 & 56] have presented his claim to such Commissioner under oath to answer said petition; on or before the 2nd day of April at nine o'clock in the forenoon; and

It is further ordered that public notice of such monition be given by publication thereof once in the Indianapolis Commercial and once in the Evansville Journal, newspapers of general circulation published respectively in the City of Indianapolis and the City of Evansville, at least three weeks prior to said return day, and that a copy of said monition be served on the respective attorneys or proctors of each and all persons or corporations who at the time of making this order shall have filed suits for loss, injury or dam-

age occasioned by or arising out of the sinking of said wharfboat, together with a copy of this order, such last mentioned service to be made on or before the first day of publication; and

It is further ordered that the beginning or prosecution of any and all suits, actions or legal proceedings of any nature or description whatsoever against the petitioner in respect of any claim arising out of or connected with the sinking of said wharfboat on May 14, 1922, be and they are hereby stayed and restrained until the hearing and determination of this proceeding; and

It is further ordered that service of this order as a restraining order may be made within this District in the usual manner and in any other district by the United States Marshal for such District delivering a certified copy of this order to the person or persons to be restrained or to their respective proctors or attorneys.

[fol. 57] IN UNITED STATES DISTRICT COURT

[Title omitted]

EXCEPTIONS TO THE PETITION OF CHERO COLA BOTTLING CO. AND OTHERS—March 31, 1923

To the Honorable Albert B. Anderson, Judge of said Court:

The respondent Chero Cola Bottling Company, National Produce Company, Raphael Bros. Dry Goods Company, U. S. Furniture Company, Red Spot Paint & Varnish Company, Evansville Metal Bed Company, Indiana Board & Filler Company, R. & G. Furniture Company, The Ichenhauser Company, Boonville Milling Company, John G. Neumann Company, Diamond Mills, Indiana Furniture Company, Purcell Seed Company, A. Bromm & Company, Torian Bros. Company, Globe Bosse World Furniture Company, Chas. Leich & Company, Ziliak & Schafer Milling Company, L. M. Baird's Sons, Southwestern Broom Manufacturing Company, Universal Furniture Company, Ideal Dairy Company, Edw. F. Goeke Company, Creasey Corporation, Vickery Bros., Chas. W. Brizius Company, Karges Wagon Company, Evansville Packing Company, Wm. Blackman Floral Company, C Graulich & Company, Klamer Factories, Inc., S. Kahn's Sons, Parsons & Scoville Company, Midland Furniture Company, Lensing Bros., Evansville Malt Company, Sunnyside Flour Mills, Anchor Supply Company, Hercules Corporation, Small & Schelosky Company, Liberty Furniture Company, Neitert Produce Company, Ohio Valley Roofing Company, [fol. 58] Bement & Seitz Company, Ragan Bros., Orr Iron Company, The Heldt Company, Davidson-Dietrich Plow Company, S. Moskowitz Company and Mr. M. J. Willett, Thomas M. Hansberger, The George Delker Company, Delker Bros. Buggy Company enter their special appearance herein for the sole purpose of objecting and excepting to the jurisdiction of this Honorable Court to hear and determine this cause, upon the following grounds:

First. It appears from the petition herein, that the Evansville wharfboat is not a vessel within the purview of the provisions of the Statutes of the United States, which provide for the exemption from liability or limitation of liability of the owner of vessels in certain cases as provided in Sections 4283, 4284 and 1285 of the Revised Statutes of the United States, and various statutes supplementary thereto and amendatory thereof.

Second. It appears from the allegations of the petition herein that the Evansville wharfboat is not a canal boat, barge or vessel used on lakes or rivers or in inland navigation within the scope of the Statutes of the United States, extending the provisions of the exemption and limitation of liability of the owners of vessels to apply to inland navigation.

Third. It appears from the petition that the Evansville wharfboat is not a vessel in the sense that the term vessel is used in admiralty or maritime laws; that it is a floating ware house fastened to the shore and used as a place to store freight of incoming and outgoing [fols. 59 & 60] steamers; that it neither makes voyages nor earns freight.

Fourth. The petition herein fails to show a cause within the jurisdiction of this Honorable Court according to the grant of such jurisdiction in the constitution of the United States and rules and practice in the admiralty courts of the United States.

Fifth. It does not appear from the averments of the petition herein that the loss and damage occasioned or incurred as in said petition set out was without the privity or knowledge of the petitioner.

Wherefore these respondents pray that said petition may be dismissed at petitioner's cost.

Isidor Kahn, Paul H. Schmidt, Proctors for Respondent.

Jurat showing the foregoing was duly sworn to by Paul H. Schmidt omitted in printing.

[fol. 61] IN UNITED STATES DISTRICT COURT

[Title omitted]

EXCEPTIONS OF BOETTICHER & KELLOGG CO. TO PETITION—March 31, 1923

To the Honorable Albert B. Anderson, Judge of the United States District Court for the District of Indiana:

The respondent Boetticher & Kellogg Co. enters its special appearance herein for the sole purpose of objecting and excepting to the

jurisdiction of this Honorable Court to hear and determine this cause, upon the following grounds:

First. It appears from the petition herein that the Evansville Wharfboat is not a vessel within the purview of the provisions of the Statutes of the United States, which provides for the exemption from liability or limitation of liability of the owner of vessels in certain cases as provided in Sections 4283, 4284 and 4285 of the Revised Statutes of the United States, and various statutes supplementary thereto and amendatory thereof.

Second. It appears from the allegations of the petition herein that the Evansville Wharfboat is not a canal boat, barge or vessel used on lakes or rivers or in inland navigation within the scope of the Statutes of the United States, extending the provisions of the exemption and limitation of liability of the owners of vessels to apply to inland navigation.

[fol. 62] Third. It appears from the petition that the Evansville Wharfboat is not a vessel in the sense that the term vessel is used in admiralty or maritime law; that it is a floating ware house fastened to the shore and used as a place to store freight of incoming and outgoing steamers; that it neither makes voyages nor carns freight.

Fourth. The petition herein fails to show a cause within the jurisdiction of this Honorable Court according to the grant of such jurisdiction in the Constitution of the United States and the rules and practice in the admiralty courts of the United States.

Fifth. It does not appear from the averments of the petition herein that the loss and damage occasioned or incurred as in said petition set out was without the privity or knowledge of the petitioner.

Sixth. It appears from the petition that the respondent Boettcher & Kellogg Co. had filed a suit against the petitioner in the Superior Court of Vanderburgh County, Indiana, before the petition was filed herein.

It is not shown that there were any steps taken for the removal of said cause from the State to the Federal Court or that there was diverse citizenship of parties that would authorize the removal, neither does it appear from the petition that the said action in the State Court was an action in rem instead of in personam; that the same cause of action between the same parties was so pending in the Superior Court of Vanderburgh County, Indiana, a court of competent jurisdiction to hear and determine said cause, before the bringing of this action in this court.

Wherefore the respondent prays that said petition may be dis- [fols. 63 & 64] missed with costs.

James T. Cutler, Proctor for Respondent.

Jurat showing the foregoing was duly sworn to by James T. Cutler omitted in printing.

[fol. 65] IN UNITED STATES DISTRICT COURT

[Title omitted]

EXCEPTIONS TO PETITION OF THE HELDT CO.—Filed March 31, 1923

To the Honorable Albert B. Anderson, Judge of the United States District Court for the District of Indiana:

The respondent The Heldt Company enteres its special appearance herein for the sole purpose of objecting and excepting to the jurisdiction of this Honorable Court to hear and determine this cause, upon the following grounds:

First. It appears from the petition herein, that the Evansville Wharfboat is not a vessel within the purview of the provisions of the Statutes of the United States, which provides for the exemption from liability or limitation of liability of the owner of vessels in certain cases as provided in Sections 4283, 4284 and 4285 of the Revised Statutes of the United States, and various statutes supplementary thereto and amendatory thereof.

Second. It appears from the allegations of the petition herein that the Evansville Wharfboat is not a canal boat, barge or vessel used on lakes or rivers or in inland navigation within the scope of the Statutes of the United States, extending the provisions of the exemption and limitation of liability of the owners of vessels to apply to inland navigations.

Third. It appears from the petition that the Evansville Wharfboat [fol. 66] is not a vessel in the sense that the term vessel is used in admiralty or maritime law; that is is a floating ware house fastened to the shore and used as a place to store freight of incoming and outgoing steamers; that it neither makes voyages nor earns freight.

Fourth. The petition herein fails to show a cause within the jurisdiction of this Honorable Court according to the grant of such jurisdiction in the Constitution of the United States and the rules and practice in the Admiralty Courts of the United States.

Fifth. It does not appear from the averments of the petition herein that the loss and damage occasioned or incurred as in said petition set out was without the privity of knowledge of the petitioner.

Wherefore the respondent prays that said petition may be dismissed with costs.

James T. Cutler, Proctor for Respondent.

Jurat showing the foregoing was duly sworn to by James T. Cutler omitted in printing.

[fol. 67] IN UNITED STATES DISTRICT COURT

ORDER OVERRULING EXCEPTIONS—May 21, 1923

Come now the libelants by Welman & Darby, their Proctors, and come respondents Chero Cola Bottling Company, National Produce Company, Raphael Bros. Dry Goods Company, U. S. Furniture Company, Red Spot Paint & Varnish Company, Evansville Metal Bed Company, Indiana Board & Filler Company, R. & G. Furniture Company, The Ichenhauser Company, Boonville Milling Company, John G. Neumann Company, Diamond Mills, Indiana Furniture Company, Purcell Seed Company, A. Bromm & Company, Torian Bros. Company, Globe Bosse World Furniture Company, Chas. Leich & Company, Ziliak & Schafer Milling Company, L. M. Baird's Sons, Southwestern Broom Manufacturing Company, Universal Furniture Company, Ideal Dairy Company, Edw. F. Goeke Company, Creasey Corporation, Vickery Bros., Chas. W. Brizius Company, Karges Wagon Company, Evansville Packing Company, Wm. Blackman Floral Company, C. Graulich & Company, Klamer Factories, Inc., S. Kahn's Sons, Parsons & Scoville Company, Midland Furniture Company, Lensing Bros., Evansville Malt Company, Sunnyside Flour Mills, Anchor Supply Company, Hercules Corporation, Small & Schelosky Company, Liberty Furniture Company, Neitert Produce Company, Ohio Valley Roofing Company, Bement & Seitz Company, Ragan Bros., Orr Iron Company, The Heldt Company, Davidson-Dietrich Plow Company, S. Moskowitz Company and Mrs. M. J. Willett, Thomas M. Hansberger, The George Delker Company, Delker Bros. Buggy Company, by their Proctor, Isidor Kahn, and [fols. 68–69] comes respondent Boetticher & Kellogg Company by James T. Cutler, its Proctor, and comes respondent The Heldt Company by its Proctor, James T. Cutler, and each of the exceptions to the libelant's petition are submitted to the Court, and the Court being advised orders that each exception be and each exception is overruled.

[fol. 71] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER—Filed June 20, 1923

To the Honorable A. B. Anderson, Judge of the United States District Court for the District of Indiana:

Chero Cola Bottling Company, National Produce Company, Raphael Bros. Dry Goods Company, U. S. Furniture Company, Red Spot Paint & Varnish Company, Evansville Metal Bed Company, Indiana Board & Filler Company, R. & G. Furniture Company, The Ichenhauser Company, Boonville Milling Company, John G. Neumann Company, Diamond Mills, Indiana Furniture Company,

Purcell Seed Company, A. Bromm & Company, Torian Bros. Company, Globe Bosse World Furniture Company, Chas. Leich & Company, Ziliak & Schafer Milling Company, L. M. Baird's Sons, Southwestern Broom Manufacturing Company, Universal Furniture Company, Ideal Dairy Company, Edw. F. Goeke Company, Creasey Corporation, Vickery Bros., Chas. W. Brizius Company, Karges Wagon Company, Evansville Packing Company, Wm. Blackman Floral Company, C. Graulich & Company, Klamer Factories, Inc., S. Kahn's Sons, Parsons & Scoville Company, Midland Furniture Company, Lensing Bros., Evansville Malt Company, Sunnyside Flour Mills, Anchor Supply Company, Hercules Corporation, Small & Schelosky Company, Liberty Furniture Company, Neitert Produce Company, [fol. 72] Ohio Valley Roofing Company, Bement & Seitz Company, Ragon Bros., Orr Iron Company, Davidson-Dietrich Plow Company, S. Moskowitz Company, Mrs. M. J. Willett, Thomas M. Hansberger, The George Delker Company, Delker Bros. Buggy Company, claimants of the Evansville and Bowling Green Packet Company, claiming damages, and having presented and proven their respective claims before the Commissioner pursuant to the monition issued by this Court, now and at all times hereafter saving to themselves respectively, all manner of benefit and advantage of exception which can be had or taken to the errors and other imperfections in said petition contained, answer the petition of the Evansville and Bowling Green Packet Company, owner of Evansville Wharfboat, but denying that the cause of action alleged in said petition is a cause of action, civil and maritime, and respectfully aver:

First. The claimants admit that the petitioner is a corporation duly created and existing under and by virtue of the laws of the State of Indiana, having its principal place of business in the City of Evansville, County of Vanderburgh, State of Indiana, but they have no knowledge or information sufficient to form a belief as to the other allegations of the first article of said petition, and therefore deny the same.

Second. The claimants admit that on the 14th day of May, 1922, and prior thereto the petitioner owned and operated a structure known and designated as the Evansville Wharfboat, but deny each and every other allegation of the second article of said petition whereby said structure is asserted to be a vessel.

[fol. 73] Further answering, the claimants aver that said structure was owned by said petitioner continuously from the 14th day of May, 1922, and is now owned and operated as a wharfboat by said petitioner in said port of Evansville.

Said claimants, aver that said structure known as the Evansville Wharfboat at all times herein mentioned had of itself no mobility nor apparatus, gear, tackle or power of propulsion to change its location or place, or power to retain its position in a fixed placed other than by land fastenings, cables and/or moorings; that it was at all times herein mentioned a floating business house, constructed upon a flat-bottomed wooden hull, floating upon the surface of the water

of the Ohio River in the port of Evansville, moored to the land and sustained by cables, not intended for navigation of any kind whatever, nor at any time herein mentioned engaged, used or capable of transporting in aid of commerce and navigation upon the Ohio River, one of the inland navigable streams of the United States, passengers or merchandise, or in passing from one place to another through its own apparatus, propulsion or power of locomotion, but was capable of being removed from place to place solely by the power of propulsion, exerted upon said structure through agencies and/or means entirely external to said structure; the primary and sole function or use which said structure at any time herein mentioned utilized or exercised was that of receiving, storing and forwarding merchandise and as a passage for passengers, so as to form a communication as aforesaid between the land where said structure was moored in the manner and means aforesaid, and other buoyant craft and/or structures along-side said structure designated as the Evansville Wharfboat.

[fol. 74] Further answering, the claimants deny each and every other allegation of the second article of said petition.

Third. The claimants admit that early in the morning of the 14th day of May, 1922, the said structure, the Evansville Wharfboat, while being loaded with merchandise, from vessels along-side began taking in water in such a large quantity that it sank in a depth of water where said structure, the Evansville Wharfboat, and its entire contents were almost entirely submerged, damaged, lost and or destroyed.

Further answering, the claimants deny each and every other allegation of the third article of said petition.

Fourth. The claimants admit that the sinking of said structure, the Evansville Wharfboat resulted in the loss and destruction of a large portion of the cargo which was then on said structure and resulted in the damage to a large portion of the merchandise and or cargo, which was not wholly lost or destroyed.

Further answering, the claimants deny each and every other allegation of the fourth article of said petition.

Fifth. The claimants admit the allegations of the fifth article of said petition.

Sixth. The claimants have no knowledge or information sufficient to form a belief as to the allegations of the sixth article of said petition, and therefore deny the same.

Seventh. The claimants deny each and every other allegation of the seventh article of said petition.

Eighth. The claimants deny each and every other allegation of the eighth article of said petition.

Ninth. Further answering, the claimants allege that shortly after midnight on the 14th day of May, 1922, the said structure, the

[fol. 75] Evansville Wharfboat, while being owned and operated by the petitioner as hereinabove stated, was a wooden structure approximately 250 feet long, and 40 feet wide, having a flat-bottomed hull constructed exclusively of wood and fastened together with iron nails and spikes, with a capacity load of approximately 1,000 tons. That when not loaded whatever, said structure had a displacement of approximately 1,000 tons and the top of said hull was approximately feet above the water line. That said structure at said time had been owned by the petitioner for approximately Twenty (20) years, during which time it had been used by them exclusively as herein stated; that previously said structure without having been rebuilt or substantially overhauled, particularly its hull, it had been so built and in the water for a long period of time the length of which is unknown to these claimants.

That shortly after midnight, on the 14th day of May, 1922 said structure, Evansville Wharfboat, its managing officer, one Jeff Williams, was the local manager of said petitioner in charge of the conduct and performance of the functions by said structure as hereinabove described; and said managing officer had his business office as the local manager of said petitioner on said structure so floating in the Ohio River, at the said port of Evansville, located on the second floor, built above the hull of said structure. That above the hull of said structure, which at the time aforesaid was approximately 7 feet deep, a business house was built and constructed of wood fastened [fol. 76] together with iron nails, for receiving and storing merchandise. That such business house occupied and entirely covered the upper portion of said hull, with the exception of the bow and stern, which protected uncovered, each approximately fifteen (15) feet; and along the sides an unoccupied area likewise uncovered approximately eight (8) feet wide; that along the sides of the first floor of said business house, were openings consisting of doors on the land side of which was a movable passage-way attached to said structure on the one end, and resting on the shore or bank of said river on the other. That the bow and stern of said structure insofar as the hull and first story of it are concerned are exactly alike in appearance, construction and/or function. That at one end of said structure extending the entire width of the occupied area of said structure, and approximately Thirty (30) feet in depth and communicating to the floor of the first story of the business house on said structure, were located the offices used by the said managing officer of said petitioner in the performance of his said duties of it.

That vessels and craft plying the Ohio River at said port and at said time stopped alongside said structure, the Evansville Wharfboat at all hours of the day or night, at all seasons of the year and on all days of the week. That said petitioner held itself out to shippers of merchandise, to the owners of vessels and to the public generally, for the performance of the functions, above described at all of such times.

That prior to the 14th day of May, 1922, said structure, the Evansville Wharfboat had been in the water continuously in the perform- [fol. 77] ance of its functions as aforesaid without having been over-

hauled, or on the ways or in dry dock for repairs, for many years, the exact period of which is unknown to these claimants. That during a period of approximately three (3) years prior to said date, the hull of said structure had from time to time deteriorated, and its timbers had rotted and its seams had spread apart, so that it leaked more or less, almost continually, which facts were well known to said petitioner. That the prevailing custom among owners of similar structures on navigable inland rivers, of the United States was, and good prudence and care required, similar structures to be placed in dry dock or on the ways for inspection, overhauling and repairs biennially. That said structure was not adequately provided by said petitioner with pumps and other facilities to properly eliminate the water from the said hull which accumulated therein as aforesaid. That the only repairs attempted by said petitioner to be made on said hull were of a haphazardous character and inefficiently installed by incompetent craftsmen and of a kind and character, such as caulking with concrete and other unsuitable methods and materials as were from the standpoint of prudence and reasonable care calculated to render said structure less suitable for the uses, purposes and functions to which said structure was adapted as above described. That by reason of the premises said structure was not capable of being loaded to capacity. That all of said facts and conditions as aforesaid were known, or with the exercise of reasonable diligence could have been ascertained and known by the petitioner through its said managing officer and other servants having the [fol. 78] charge and custody of said structure.

That at about 1:00 o'clock A. M. on the 14th day of May, 1922, there was loaded and stored on said structure for shipment on vessels plying the Ohio River, a large and heavy load and cargo of merchandise. That in addition thereto, at said time the Bay Queen, a vessel plying the Ohio River, had unloaded on said structure, a heavy load and cargo of merchandise. That while the said Bay Queen was so unloading its cargo upon said structure, the Evansville Wharfboat, was in charge of its said managing officer and other servants whose names are to these claimants unknown at this time. That immediately thereafter, and before 2:00 o'clock A. M. on said date while the said structure was in the leaky and unseaworthy conditon as above described, it began to leak in a larger measure than theretofore and take in larger quantity of water, and began at an increased rate from that time onward to sink, all of which facts were known to the said manager officer and other servants of said petitioner in charge of said structure, or by the exercise or reasonable diligence could readily have been by them ascertained. That while said condition was prevailing and increasing as aforesaid, another vessel the Hazel Rice, plying the Ohio River stopped alongside said structure and with the knowledge, approval and consent of said managing officer and other servants in charge of said structure began unloading a still greater and heavier cargo of merchandise upon said structure. That the said Hazel Rice continued so unloading its cargo, thereby further increasing the volume of water entering the hull of said [fol. 79] structure, until said structure sank to the bottom of the

Ohio River, at about 6:00 o'clock A. M. on said date. That the said managing officer and said other servants of said petitioner, in charge of said structure did not make any effort to summon other aid, assistance or agencies possessing adequate pumping facilities or prevent the further loading of merchandise on said structure and/or begin unloading the merchandise on said structure belonging to these claimants before said structure sank and destroyed said merchandise, although all of these precautions with the exercise of reasonable prudence and care could have been taken for the purpose of preventing the damage and destruction of the cargo, shipments and merchandise belonging to these claimants. That other and adequate pumping facilities were available and accessible and could have been secured by the said managing officer and said servants in charge of said petitioner's said structure had an effort been made so to do; that the merchandise belonging to these claimants could likewise have been unloaded and damage and loss thereto avoided, had the said managing officer and said servants of said petitioner exercised reasonable prudence, care and diligence in so doing.

That all and singular the premises are true.

Wherefore the claimants pray that said petition may be dismissed, that the order of this Court heretofore entered on the 24th day of February, 1923, restraining and staying these claimants from beginning or prosecuting any and all suits, actions or the legal proceedings of any nature or description whatsoever against the petitioner herein in respect of any of the respective claims arising out of or connected [fols. 80 & 81] with the sinking of said wharfboat, either in this Court or elsewhere be dissolved; and that these claimants may have such other and further relief as the justice of their cause may require.

Isidor Kahn, Proctor for Claimants. Paul H. Schmidt, Proctor for Claimants.

Jurat showing the foregoing was duly sworn to by Isidor Kahn omitted in printing.

[fol. 82] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF THE BOETTICHER & KELLOGG CO.—Filed June 2, 1923

To the Honorable A. B. Anderson, Judge of the United States District Court for the District of Indiana:

The Boetticher & Kellogg Co., a corporation, claimant of the Evansville and Bowling Green Packet Company, claiming damages, and having presented and proven its claim before the Commissioner pursuant to the monition issued by this court, now and at all times hereafter saving to itself, all manner of benefit and advantage of ex-

ception which can be had or taken to the errors and other imperfections in said petition contained, answers the petition of the Evansville and Bowling Green Packet Company, owner of Evansville Wharfboat, but denying that the cause of action alleged in said petition is a cause of action, civil and maritime, and avers:

First. The claimant admits that the petitioner is a corporation duly created and existing under and by virtue of the laws of the State of Indiana, having its principal place of business in the City of Evansville, County of Vanderburg, State of Indiana, but it has no knowledge or information sufficient to form a belief as to the other allegations of the first article of said petition, and therefore denies the same.

Second. The claimant admits that on the 14th day of May, 1922, and prior thereto the petitioner owned and operated a structure known and designated as the Evansville Wharfboat, but denies each [fol. 83] and every other allegation of the second article of said petition whereby said structure is asserted to be a vessel.

Further answering, the claimant avers that said structure was owned by said petitioner continuously from the 14th day of May, 1922, and is now owned and operated as a wharfboat by said petitioner in said port of Evansville.

Said claimant, avers that said structure known as the Evansville Wharfboat at all times herein mentioned had of itself no mobility nor apparatus, gear, tackle or power of propulsion to change its location or place, or power to retain its position in a fixed place other than by land fastenings, cables and/or moorings; that it was at all times herein mentioned a floating business house constructed upon a flat-bottomed wooden hull, floating upon the surface of the water of the Ohio River in the port of Evansville, moored to the land and sustained by cables, not intended for navigation of any kind whatever, now at any time herein mentioned engaged, used or capable of transporting in aid of commerce and navigation upon the Ohio River, one of the inland navigable streams of the United States, passengers or merchandise, or in passing from one place to another through its own apparatus, propulsion or power of locomotion, but was capable of being removed from place to place solely by the power of propulsion, exerted upon said structure through agencies and/or means entirely external to said structure; the primary and sole function or use which said structure at any time herein mentioned ever utilized or exercised was that of receiving, storing and forwarding merchandise and as a passage for passengers, so as to form a communication as aforesaid between the land where said structure was moored in [fol. 84] the manner and means aforesaid, and other buoyant craft and/or structures along-side said structure designated as the Evansville Wharfboat.

Further answering, the claimant denies each and every allegation of the second article of said petition.

Third. The claimant admits that early in the morning of the 14th day of May, 1922, the said structure, the Evansville Wharf-

boat, while being loaded with merchandise, from vessels along-side began taking in water in such a large quantity that it sank in a depth of water where said structure the Evansville Wharfboat, and its entire contents were almost entirely submerged, damaged, lost and or destroyed.

Further answering, the claimant denies each and every other allegation of the third article of said petition.

Fourth. The claimant admits that the sinking of said structure, the Evansville Wharfboat resulted in the loss and destructtion of a large portion of the cargo which was then on said structure and resulted in the damage to a large portion of the merchandise and/or cargo, which was not wholly lost or destroyed.

Further answering, the claimant denies each and every other allegation of the fourth article of said petition.

Fifth. The claimant admits the allegations of the fifth article of said petition.

Sixth. The claimant has no knowledge or information sufficient to form a belief as to the allegations of the sixth article of said petition, and therefore denies the same.

Seventh. The claimant denies each and every other allegation of the seventh article of said petition.

Eighth. The claimant denies each and every other allegation of the eighth article of said petition.

Ninth. Further answering, the claimant alleges that shortly after midnight on the 14th day of May, 1922, the said structure, the [fol. 87] Evansville Wharfboat, while being owned and operated by the petitioner as hereinabove stated, was a wooden structure approximately 250 feet long, and 40 feet wide, having a flat-bottomed hull constructed exclusively of wood and fastened together with iron nails and spikes, with a capacity load of approximately 1,000 tons. That when not loaded whatever, said structure had a displacement of approximately 1,000 tons and the top of said hull was approximately 7 feet above the water line. That said structure at said time had been owned by the petitioner for approximately twenty (20) years, during which time it had been used by them exclusively as herein stated; that previously said structure without having been rebuilt or substantially overhauled, particularly its hull, it had been so built and in the water for a long period of time, the length of which is unknown to this claimant.

That shortly after midnight, on the 14th day of May, 1922, said structure, Evansville Wharfboat, its managing officer one Jeff Williams, was the local manager of said petitioner in charge of the conduct and performance of the functions by said structure as hereinabove described; and said managing officer had his business office as the local manager of said petitioner on said structure so floating on the Ohio River, at the said port of Evansville, located on the second floor, built above the hull of said structure. That above the

hull of said structure, which at the time aforesaid was approximately 7 feet deep, a business house was built and constructed of wood fastened together with irons nails, for receiving and storing merchandise. That such business house occupied and entirely covered the upper portion of said hull, with the exception of the bow and stern, which projected uncovered, each approximately fifteen (15) feet; and along the sides an unoccupied area likewise uncovered [fol. 86] approximately eight feet wide; that along the sides of the first floor of said business house, were openings consisting of doors on the land side of which was a movable passage-way attached to said structure on the one end, and resting on the shore or bank of said river on the other. That the bow and stern of said structure insofar as the hull and first story of it are concerned are exactly alike in appearance, construction and/or function. That at one end of said structure extending the entire width of the occupied area of said structure and approximately thirty feet in depth and communicating to the floor of the first story of the business house on said structure, were located the offices used by the said managing officer of said petitioner in the performance of his said duties of it.

That vessels and craft plying the Ohio River at said port and at said time stopped along-side said structure, the Evansville Wharfboat at all hours of the day or night, at all seasons of the year and on all days of the week. That said petitioner held itself out to shippers of merchandise, to the owners of vessels and to the public generally, for the performance of the functions, above described at all of such times.

That prior to the 14th day of May, 1922, said structure, the Evansville Wharfboat had been in the water continuously in the performance of its functions as aforesaid without having been overhauled, or on the ways or in dry dock for repairs, for many years, the exact period of which is unknown to this claimant. That during a period of approximately three years prior to said date, the hull of said structure had from time to time deteriorated, and its timbers had rotted and its seams had spread apart, so that it leaked more or less, almost continually, which facts were well known to said [fol. 87] petitioner. That the prevailing custom among owners of similar structures on navigable inland rivers, of the United States was, and good *prudence* and care required, similar structures to be placed in dry dock or on the ways for inspection, overhauling and repairs biennially. That said structure was not adequately provided by said petitioner with pumps and other facilities to properly eliminate the water from said hull which accumulated therein as aforesaid. That the only repairs attempted by said petitioner to be made on said hull were of a haphazardous character and inefficiently installed by incompetent craftsmen and of a kind and character, such as caulking with concrete and other unsuitable methods and materials as were from the standpoint of prudence and reasonable care calculated to render said structure less suitable for the uses, purposes and functions to which said structure was adapted as above described. That by reason of the premises said structure was not capable of being loaded to capacity. That all of said facts

and conditions as aforesaid were known, or with the exercise of a reasonable diligence could have been ascertained and known by the petitioner through its said managing officer and other servants having the charge and custody of said structure.

That at about 1:00 o'clock A. M. on the 14th day of May, 1922, there was loaded and stored on said structure for shipment on vessels plying the Ohio River, a large and heavy load and cargo of merchandise. That in addition thereto, at said time the Bay Queen, a vessel plying the Ohio River, had unloaded on said structure, a heavy load and cargo of merchandise. That while the said Bay Queen was so unloading its cargo upon said structure, the Evansville Wharfboat, was in charge of its said managing officer and other servants whose names are to this claimant unknown at this time. That immediately thereafter, and before 2:00 o'clock A. M. on said date while the said structure was in the leaky and unseaworthy condition [fol. 88] as above described, it began to leak in a larger measure than theretofore and take in larger quantity of water, and began at an increased rate from that time onward to sink, all of which facts were known to the said manager officer and other servants of said petitioner in charge of said structure, or by the exercise of reasonable diligence could readily have been by them ascertained. That while said condition was prevailing and increasing as aforesaid, another vessel the Hazel Rice, plying the Ohio River stopped along-side said structure and with the knowledge, approval and consent of said managing officer and other servants in charge of said structure began unloading a still greater and heavier cargo of merchandise upon said structure. That the said Hazel Rice continued so unloading its cargo, thereby further increasing the volume of water entering the hull of said structure, until said structure sank to the bottom of the Ohio River, at about 6:00 o'clock A. M. on said date. That the said managing officer and said other servants of said petitioner in charge of said structure did not make any effort to summon other aid, assistance or agencies possessing adequate pumping facilities or prevent the further loading of merchandise on said structure and or begin unloading the merchandise on said structure belonging to this claimant before said structure sank and destroyed said merchandise, although all of these precautions with the exercise of reasonable prudence and care could have been taken for the purpose of preventing the damage and destruction of the cargo, shipments and merchandise belonging to this claimant. That other and adequate pumping facilities were available and accessible and could have been procured by the said managing officer and said servants in charge of said petitioner's said structure had an effort been made so to do that the merchandise belonging to this claimant could likewise have been unloaded and damage and loss thereto [fol. 89] avoided, had the said managing officer and said servants of said petitioner exercised reasonable prudence, care and diligence in so doing.

That all and singular the premises are true.

Wherefore the claimant prays that said petition may be dismissed. That the order of this court heretofore entered on the 24th day of

February, 1923, restraining and staying this claimant from beginning or prosecuting any and all suits, actions or the legal proceedings of any nature or description whatsoever against the petitioner herein in respect of any claim arising out of or connected with the sinking of said wharfboat, either in this court or elsewhere be dissolved; and that this claimant may have such other and further relief as the justice of its cause may require.

James T. Cutler, Proctor for Claimant.

[fols. 90 & 91] Jurat showing the foregoing was duly sworn to by A. M. Barthel; omitted in printing.

[fol. 92] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF THE HELDT CO.—Filed June 21, 1923

To the Honorable A. B. Anderson, Judge of the United States District Court, for the District of Indiana:

The Heldt Company, a corporation, claimant of the Evansville and Bowling Green Packet Company, claiming damages, and having presented and proven its claim before the Commissioner pursuant to the monition issued by this court, now and at all times hereafter saving to itself, all manner of benefit and advantage of exception which can be had or taken to the errors and other imperfections in said petition contained, answers the petition of the Evansville and Bowling Green Packet Company, owner of Evansville Wharfboat, but denying that the cause of action alleged in said petition is a cause of action, civil and maritime, and avers:

First. The claimant admits that the petitioner is a corporation duly created and existing under and by virtue of the laws of the State of Indiana, having its principal place of business in the City of Evansville, County of Vanderburgh, State of Indiana, but it has no knowledge or information sufficient to form a belief as to the other allegations of the first article of said petition, and therefore denies the same.

Second. The claimant admits that on the 14th day of May, 1922, [fol. 93] and prior thereto the petitioner owned and operated a structure known and designated as the Evansville Wharfboat, but denies each and every other allegation of the second article of said petition whereby said structure is asserted to be a vessel.

Further answering, the claimant avers that said structure was owned by said petitioner continuously from the 14th day of May, 1922, and is now owned and operated as a wharfboat by said petitioner in said port of Evansville.

Said claimant, avers that said structure known as the Evansville Wharfboat at all times herein mentioned had of itself no mobility

nor apparatus, gear, tackle or power of propulsion to change its location or place, or power to retain its position in a fixed place other than by land fastenings, cables and/or moorings; that it was at all times herein mentioned a floating business house constructed upon a flat-bottomed wooden hull, floating upon the surface of the water of the Ohio River in the port of Evansville, moored to the land and sustained by gables, not intended for navigation of any kind whatever, not at any time herein mentioned engaged, used or capable of transporting in aid of commerce and navigation upon the Ohio River, one of the inland navigable streams of the United States, passengers or merchandise, or in passing from one place to another through its own apparatus, propulsion or power of locomotion, but was capable of being removed from place to place solely by the power of propulsion, exerted upon said structure through agencies and/or means entirely external to said structure; the primary and sole function or use which said structure at any time herein mentioned over utilized or exercised was that of receiving, storing and forwarding merchandise and as a passage for passengers, so as to form a communication as aforesaid between the land where said structure was moored in the manner and means aforesaid, and other buoyant craft and/or struc-
[fol. 94] tures along-side said structure designated as the Evansville Wharfboat.

Further answering, the claimant denies each and every allegation of the second article of said petition.

Third. The claimant admits that early in the morning of the 14th day of May, 1922, the said structure, the Evansville Wharfboat, while being loaded with merchandise, from vessels along-side began taking in water in such a large quantity that it sank in a depth of water where said structure, the Evansville Wharfboat, and its entire contents were almost entirely submerged, damaged, lost and/or destroyed.

Further answering, the claimant denies each and every other allegation of the third article of said petition.

Fourth. The claimant admits that the sinking of said structure, the Evansville Wharfboat resulted in the loss and destruction of a large portion of the cargo which was then on said structure and resulted in the damage to a large portion of the merchandise and/or cargo, which was not wholly lost or destroyed.

Further answering, the claimant denies each and every other allegation of the fourth article of said petition.

Fifth. The claimant admits the allegations of the fifth article of said petition.

Sixth. The claimant has no knowledge or information sufficient to form a belief as to the allegations of the sixth article of said petition, and therefore denies the same.

Seventh. The claimant denies each and every other allegation of the seventh article of said petition.

Eighth. The claimant denies each and every other allegation c the eighth article of said petition.

Ninth. Further answering, the claimant alleges that shortly afte [fol. 95] midnight on the 14th day of May, 1922, the said structur the Evansville Wharfboat, while being owned and operated by th petitioner as hereinabove stated, was a wooden structure approx mately 250 feet long, and 40 feet wide, having a flat bottomed hu constructed exclusively of wood and fastened together with iron nail and spikes, with a capacity load of approximately 1,000 tons. Tha when not loaded whatever, said structure had a displacement of ap proximately 1,000 tons and the top of said hull was approximatel 7 feet above the water line. That said structure at said time had bee owned by the petitioner for approximately twenty (20) years, durin which time it had been used by them exclusively as herein stated that previously said structure without having been rebuilt or sub stantially overhauled, particularly its hull, it had been so built an in the water for a long period of time, the length of which is un known to this claimant.

That shortly after midnight, on the 14th day of May, 1922, sai structure, Evansville Wharfboat, its managing officer one Jeff Wil liams, was the local manager of said petitioner in charge of the con duct and performance of the functions by said structure as herein above described; and said managing officer had his business office a the local manager of said petitioner on said structure so floating o the Ohio River, at the said port of Evansville, located on the secon floor, built above the hull of said structure. That above the hull o said structure, which at the time aforesaid was approximately 7 fee deep, a business house was built and constructed of wood fastene together with iron nails, for receiving and storing merchandise. Tha such business house occupied and entirely covered the upper portion of said hull, with the exception of the bow and stern, which pro jected uncovered, each approximately fifteen (15) feet; and along th [fol. 96] sides an unoccupied area likewise uncovered approximately eight feet wide; that along the sides of the first floor of said busines house, were openings consisting of doors on the land side of which was a movable passage-way attached to said structure on the end end and resting on the shore or bank of said river on the other. That th bow and stern of said structure in so far as the hull and first story of it are concerned are exactly alike in appearance, construction and o function. That at one end of said structure extending the entire width of the occupied area of said structure, and approximately thirty feet in depth and communicating to the floor of the first story of the business house on said structure, were located the offices used by the said managing officer of said petitioner in the performance of his said duties of it.

That vessels and craft plying the Ohio River at said port and at said time stopped along-side said structure, the Evansville Wharf boat at all hours of the day or night, at all seasons of the year and on all days of the week. That said petitioner held itself out to ship pers of merchandise, to the owners of vessels and to the public gen-

erally, for the performance of the functions, above described at all of such times.

That prior to the 14th day of May, 1922, said structure, the Evansville Wharfboat had been in the water continuously in the performance of its functions as aforesaid without having been overhauled, or on the ways or in dry dock for repairs, for many years, the exact period of which is unknown to this claimant. That during a period of approximately three years prior to said date, the hull of said structure had from time to time deteriorated, and its timbers had rotted and its seems had spread apart, so that it leaked more or less, almost continually, which facts were well known to said petitioner. That the prevailing custom among owners of similar structures on nav- [fol. 97] igable inland rivers, of the United States was, and good prudence and care required, similar structures to be placed in dry dock or on the ways for inspection, overhauling and repairs biennially. That said structure was not adequately provided by said petitioner with pumps and other facilities to properly eliminate the water from said hull which accumulated therein as aforesaid. That the only repairs attempted by said petitioner to be made on said hull were of a haphazardous character and inefficiently installed by incompetent craftsmen and of a kind and character, such as caulking with concrete and other unsuitable methods and materials as were from the standpoint of prudence and reasonable care calculated to render said structure less suitable for the uses, purposes and functions to which said structure was adapted as above described. That by reason of the premises said structure was not capable of being loaded to capacity. That all of said facts and conditions as aforesaid were known, or with the exercise of a reasonable diligence could have been ascertained and known by the petitioner through its said managing officer and other servants having the charge and custody of said structure.

That at about 1:00 o'clock A. M. on the 14th day of May, 1922, there was loaded and stored on said structure for shipment on vessels plying the Ohio River, a large and heavy load and cargo of merchandise. That in addition thereto, at said time the Bay Queen, a vessel plying the Ohio River, had unloaded on said structure, a heavy load and cargo of merchandise. That while the said Bay Queen was so unloading its cargo upon said structure, the Evansville Wharfboat, was in charge of its said managing officer and other servants whose names are to this claimant unknown at this time. That immediately thereafter, and before 2:00 o'clock A. M. on said date while the said structure was in the leaky and unseaworthy con- [fol. 98] dition as above described, it began to leak in a larger measure than theretofore and take in larger quantity of water, and began at an increased rate from that time onward to sink, all of which facts were known to the said manager officer and other servants of said petitioner in charge of said structure, or by the exercise of reasonable diligence could readily have been by them ascertained. That while said condition was prevailing and increasing as aforesaid, another vessel the Hazel Rice, plying the Ohio River

stopped along-side said structure and with the knowledge, approval and consent of said managing officer and other servants in charge of said structure began unloading a still greater and heavier cargo of merchandise upon said structure. That the said Hazel Rice continued so unloading its cargo, thereby further increasing the volume of water entering the hull of said structure, until said structure sank to the bottom of the Ohio River, at about 6:00 o'clock A. M. on said date. That the said managing officer and said other servants of said petitioner in charge of said structure did not make any effort to summon other aid, assistance or agencies possessing adequate pumping facilities or *pervent* the further loading of merchandise on said structure and or begin unloading the merchandise on said structure belonging to this claimant before said structure sank and destroyed said merchandise, although all of these precautions with the exercise of reasonable prudence and care could have been taken for the purpose of preventing the damage and destruction of the cargo, shipments and merchandise belonging to this claimant. That other and adequate pumping facilities were available and accessible and could have been procured by the said managing officer and said servants in charge of said petitioner's said structure had an effort been made so to do; that the merchandise belonging to this claimant could likewise have been unloaded and damage and loss thereto [fol. 99] avoided, had the said managing officer and said servants of said petitioner exercise- reasonable prudence, care and diligence in so doing.

That all and singular the premises are true.

Wherefore the claimant prays that said petition may be dismissed. That the order of this court heretofore entered on the 24th day of February, 1923, restraining and staying this claimant from beginning or prosecuting any and all suits, actions or the legal proceedings of any nature or description whatsoever against the petitioner herein in respect of any claim arising out of or connected with the sinking of said wharfboat, either in this court or elsewhere be dissolved; and that this claimant may have such other and further relief as the justice of its cause may require.

James T. Cutler, Proctor for Claimant.

[fols. 100 & 101] Jurat showing the foregoing was duly sworn to by Owen Monroe; omitted in printing.

[fol. 102] In United States District Court

[Title omitted]

Report of Commissioner—Filed January 5, 1924

To the Honorable Albert B. Anderson, Judge of said Court:

The report of Charles E. Harman, to whom the above matter was referred as Commissioner, to receive the filing and proof of claims,

shows that under the order of this court, there were filed with said commissioner and without objection allowed, claims as follows:

[fol. 103] Lensing Brothers	$150.00
Delker Bros. Buggy Co.	120.00
Geo. Delker Co.	25.00
Mrs. M. J. Willett	12.00
Davidson-Dietrich Plow Co.	3.85
The Heldt Co.	27.36
Ragon Bros.	833.49
Orr Iron Co.	436.57
Bement & Seitz	1,326.35
Ohio Valley Roofing Co.	8.05
Neitert Produce Co.	190.28
Small & Shelosky Co.	71.86
Hercules Corporation	21.36
Sunnyside Flour Mills	36.24
Evansville Malt Co.	7.00
Midland Furniture Co.	19.75
Parsons & Scoville Co.	1,076.14
S. Kahns Sons	1,326.75
Klauer Factories	345.50
C. Graulich Co.	35.25
W. Blackman Floral Co.	20.50
Evansville Packing Co.	118.79
" " "	5.50
Karges Wagon Co.	16.15
Vickery Bros.	12.35
Chas. M. Brizius Co.	14.90
Creasy Corporation	34.05
Edw. F. Goeke Co.	9.10
Universal Furniture Co.	153.50
Southwestern Broom Mfg. Co.	166.32
Anchor Supply Co.	31.64
L. M. Bairds Sons	83.25
Ziliak & Schafer Milling Co.	215.96
Chas. Leich & Co.	103.64
Globe-Bosse-World Furniture Co.	183.40
Torian Bros. Co.	169.18
A. Bromm & Co.	339.67
Purcell Seed Co.	217.96
Indiana Furniture Co.	74.75
John G. Neumann Co.	167.63
Boonville Milling Co.	60.14
Ichenhauser Co.	29.55
R. & G. Furniture Co.	41.59
Indiana Board & Filler Co.	8.89
Evansville Metal Bed Co.	235.56
Red Spot Paint & Varnish Co.	544.30
U. S. Furniture Co.	457.35
Raphael Bros. Dry Goods Co.	771.42

National Produce Co.	18.70
Chero Cola Bottling Co.	13.20
Liberty Furniture Co.	17.50
Boetticher-Kellogg Co.	1,749.46
Rosiclaire Hospital Association	310.45
W. E. Teer	101.26
Diamond Mills	80.64
Ideal Dairy Co.	45.47

[fol. 104] That objections were filed to the claim of Thomas Hansbarger in the sum of $238.00, and that upon hearing of evidence said claim was by me allowed in the sum of $238.00

That objection was filed to the claim of S. Moskowitz, in the sum of $516.51, and that upon hearing of evidence said — was by me allowed in the sum of 516.51

That on July 31, 1923, under a supplementary order of this court, there were filed and without objection allowed the following claims:

Proctor & Gamble Dist. Co.	58.80
Mumford Hardware Co.	252.61
Brown Shoe Co.	60.00
Evansville Broom Co.	81.05
Indiana Collar Co.	31.80
Iglehcart Bros.	77.27
Ohio Valley Seed Co.	285.05

[fols. 105-120] Your said commissioner would further show that under the first order of this court appointing him commissioner herein, he held a hearing of evidence to determine the amount for which the petitioner should give bond, and rendered to the court his findings and recommendation therein. That under a second order of this court, he received the filing and proof of claims herein, and held hearing upon those claims to which objection was made, and herewith has reported to the court of his actions thereunder. That he considers that a reasonable fee for all of his said services as such commissioner would be $50.00, which sum he asks be allowed him and taxed as costs in this case.

Respectfully submitted, Charles E. Harman, Commissioner as Aforesaid.

[fol. 121] IN UNITED STATES DISTRICT COURT

[Title omitted]

EXCEPTIONS TO COMMISSIONER'S REPORT—Filed February 25, 1924

The undersigned, The Evansville and Bowling Green Packet Company, petitioner in this proceeding, hereby objects and excepts to the report of Charles E. Harman, Commissioner, which was filed in

this proceeding on the 5th day of January, 1924, upon the following grounds, namely:

First. The Commissioner in his said report exceeds the authority granted to him in this court's order of reference to the 24th day of February, 1923, in that he reports that he has allowed various claims, in fact all claims mentioned in the report, although the direction given to him in said order of reference was only to take proof of all claims which shall be presented in pursuance of the monition issued.

Second. That said Commissioner had no right or authority to allow said claims or any of them or to recommend them for allowance or payment, for the reason that the validity of said claims together with the liability of the petitioner herein for said claims are matters to be determined by this court upon the original petition herein filed.

Third. That there is no liability whatever for said claims or any of said claims for the reason that the loss or damage alleged by said claimants and each of them resulted in each instance from what is known as a sea or water peril within the meaning of the exceptions stated in each of the various bills of lading which are attached with and made a part of each of said sworn claims, which exceptions are contained in Section 9 of each bill of lading and are to the effect that "no carrier or party in possession shall be liable for any loss or damage resulting from the perils of the lakes, sea or other waters."

Fourth. That there is no liability whatever for said claims or any of said claims for the reason that the loss or damage alleged by said claimants and each of them was caused in each instance from what is known as the act of God within the meaning of the exceptions stated in each of the various bills of lading which are attached with and made a part of each of said sworn claims, which exceptions are contained in Section 1 of each bill of lading and are to the effect that "no carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God."

WELMAN & DARBY,
Proctors for Petitioner.

[fol. 122] IN UNITED STATES DISTRICT COURT

ORDER CONTINUING CAUSE—February 28, 1924

Come now the parties and this cause being at issue, the witnesses are duly sworn, and said cause is partially heard, and thereupon said cause is continued for further hearing.

[fol. 123] IN UNITED STATES DISTRICT COURT

JUDGMENT—May 6, 1924

This cause comes on to be heard further at this term, and is argued by counsel, and thereupon upon consideration thereof,

It is ordered, adjudged and decreed that the Court has no jurisdiction of the subject-matter of said cause, and that said cause be and the same is therefore now dismissed, and that each party pay its own costs, to all of which the Evansville and Bowling Green Packet Company at the time excepts.

[fol. 124] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—June 13, 1924

Comes now the petitioner in the above entitled cause and files and presents to the court its petition for an appeal to the Supreme Court of the United States from the final decree of this court dismissing this cause for want of jurisdiction of the subject matter, and said petitioner files therewith its assignment of errors. And it appearing that respondents have been duly notified of this proposed appeal, and the court having duly examined said petition now grants the prayer thereof and allows the appeal of The Evansville and Bowling Green Packet Company to the Supreme Court of the United States, as prayed for, upon condition that said petitioner file its appeal bond in the sum of Five Hundred Dollars ($500.00) together with good and sufficient security to be approved by the court.

And said petitioner now files and presents its appeal bond in the sum of $500.00 with the Indemnity Insurance Company of North America as surety, and conditioned as required by law, which bond and the surety thereon are each now by the court approved.

And the court now certifies the question of jurisdiction which is in issue in this cause to the Supreme Court of the United States for decision; and said certificate is now filed and made a part of the record in this cause.

[fol. 125] It is further ordered by the court that a transcript of the record as provided by law to be made and copies of the proofs and such entries and papers on file as may be necessary on the hearing of the appeal shall be sent to the Supreme Court of the United States.

And now upon the application of the petitioner, it is ordered and decreed that the injunction made and entered in this cause on the 24th day of February, 1923, staying and restraining the prosecution of all suits or other legal proceedings in respect to any and all claims arising out of or connected with the sinking of the Evansville Wharfboat be and it is hereby restored and continued in full force and effect, and that all such suits or other legal proceedings in whatever court or courts the same may be filed or pending be and they are hereby stayed, restrained and enjoined during the pendency of and

until the final termination of this appeal; upon condition, however, that said petitioner file herein within ten days from this date its bond in the sum of $15,000.00 with surety to the court's approval indemnifying the claimants herein and each of them to the extent of said sum of $15,000.00 against the insolvency of said petitioner during and throughout the period that said restraining order remains in force. And now said petitioner files its indemnifying bond in the sum of $15,000.00 conditioned as above required with the Indemnity Insurance Company of North America as surety, which bond is now approved.

[fol. 126] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL

The above named petitioner, conceiving itself aggrieved by the order and decree made and entered herein on the 6th day of May, 1924, dimssing this casue for want of jurisdiction, does hereby appeal from said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith.

And said petitioner prays that its appeal be allowed and that the question of jurisdiction alone be certified direct to the Supreme Court of the United States from the Court below for decision, that citation issue as provided by law, and that a transcript of the record, proceedings and papers in this cause upon which said order and decree was made, duly authenticated, may be sent to the Supreme Court of the United States, and that said order and decree may be reversed.

And said petitioner further prays that the proper order touching the security to be required of it to perfect its appeal herein be made.

The Evansville and Bowling Green Packet Company, by Welman & Darby, Its Proctors.

[fol. 127] In United States District Court

[Title omitted]

ASSIGNMENT OF ERRORS

The Evansville and Bowling Green Packet Company, petitioner herein, hereby assigns error in the decision and final decree of the District Court, as follows:

First. The court erred in holding that it had no jurisdiction of the subject matter of this cause.

Second. The court erred in entering a decree dismissing this cause for want of jurisdiction of the subject matter thereof.

Third. The court erred in failing and refusing to hold and find that the Evansville Wharfboat at the time of the sinking thereof on the 14th day of May, 1922, was a vessel within the maritime law.

Fourth. The court erred in failing and refusing to hold and find that the Evansville Wharfboat at the time of the sinking thereof on the 14th day of May, 1922, was a vessel within the meaning and application of the Limitation of Liability Act of Congress, approved March 3rd, 1851, and the Acts of Congress amendatory thereof and supplemental thereto.

Fifth. The court, having previously overruled respondents' exceptions to the petition herein, erred in failing and refusing to hold and find upon the evidence submitted at the final hearing that the Evansville Wharfboat at the time of the sinking thereof on the 14th day of May 1922, was a vessel within the maritime law and within the meaning and application of the Limitation of Liability Act of Congress, approved March 3rd, 1851, and the Acts of Congress amendatory thereof and supplemental thereto.

Sixth. The court erred in failing and refusing to render a decree in favor of the petitioner exempting said petition from all liability on account of the claims of the respondents herein.

Seventh. The court erred in failing and refusing to render a decree in favor of the petitioner herein entitling said petitioner (if [fol. 128] adjudged liable to the claimants herein) to a limitation of its total liability to the amount found to be the value of the Evansville Wharfboat immediately after the sinking thereof on the 14th day of May, 1922, namely, the sum of $2,012.00.

Eighth. The court erred in holding and finding that the wharfboat in question was not a vessel within the maritime law, or within the Limitation of Liability Act of Congress, approved March 3rd, 1851, and the Acts of Congress amendatory thereof and supplemental thereto, and in dismissing this cause and petition for that reason.

Ninth. The court erred in holding that it was without jurisdiction to grant to the petitioner the relief or any of the relief prayed for in the petition.

Tenth. The court erred in holding that the evidence heard at the final hearing of this cause did not show any right in the petitioner to limit its liability under the provisions of the laws of the United States.

Eleventh. The court erred generally in its decision against the petitioner.

Wherefore, said The Evansville and Bowling Green Packet Company prays that the decree of said District Court be reversed and further prays for all other proper relief.

The Evansville and Bowling Green Packet Company, by
Wehman & Darby, Its Proctors.

[fol. 129] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL

To the following-named respondents in the above-entitled cause:

Chero Cola Bottling Company, National Produce Company, Raphael Brothers Dry Goods Company, U. S. Furniture Company, Red Spot Paint & Varnish Company, Evansville Metal Bed Company, Indiana Board & Filler Company, R. & G. Furniture Company, The Ichenhauser Company, Boonville Milling Company, John G. Neumann Company, Diamond Mills, Indiana Furniture Company, Purcell Seed Company, A. Bronm & Company, Torian Brothers Company, Globe Bosse World Furniture Company, L. M. Baird's Sons, Southwestern Broom Manufacturing Company, Universal Furniture Company, Ideal Dairy Company, Edw. F. Cocke Company, Creasey Corporation, Vickery Brothers, Chas. W. Brizius Company, Karges Wagon Company, Evansville Packing Company, Wm. Blackman Floral Company, C. Graulich & Company, Klamer Factories, Inc., S. Kahn's Sons, Parsons & Scoville Company, Midland Furniture Company, Lensing Brothers, Evansville Malt Company, Sunnyside Flour Mills, Anchor Supply Company, Hercules Corporation, Small & Schelosky Company, Liberty Furniture Company, Neitert Produce Company, Ohio Valley Roofing Company, Bement & Seitz Company, Ragn Bros., Orr Iron Company, The Heldt Company, Davidson-Dietrich Plow Company, S. Moskowitz Company, Mrs. M. J. Willett, Thomas M. Hansberger, The George Delker Company, Delker Bros. Buggy Company, Boettcher & Kellogg Company, Rosiclaire Hospital Association, W. E. Teer, Proctor & Gamble Distributing Company, Mumford Hardware Company, Brown Shoe Company, Evansville Broom Company, Indiana Collar Company, Igleheart Brothers and Ohio Valley Seed Company:

You and each of you are hereby notified that the Evansville and Bowling Green Packet Company, petitioner in the above entitled cause, will on the 13th day of June, 1924, at 9:30 o'clock A. M., or as soon thereafter as counsel may be heard, present to the court a petition for an appeal from the final decree of this court in this proceeding to the Supreme Court of the United States.

Annexed herewith is a copy of the petition for appeal which will be presented to the court at the time aforesaid.

Evansville and Bowling Green Packet Company, by Welman & Darby, Its Proctors.

[fol. 130] ACKNOWLEDGMENT OF SERVICE

We, the undersigned, Proctors who collectively represent all of the respondents and claimants named in the foregoing notice hereby

acknowledge the receipt and service of said notice together with a copy of the petition attached therewith this 7th day of June, 1924.

Isidor Kahn, James T. Cutler, Paul H. Schmidt, Joseph H. Iglehart, Proctors for Respondents.

[fol. 131] Bond on Appeal for $500—Approved and filed June 13, 1924; omitted in printing

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[fol. 132] Indemnifying Bond for $15,000—Approved and filed June 13, 1924; omitted in printing

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[fol. 133] In United States District Court

[Title omitted]

Certificate of District Judge Certifying Question of Jurisdiction

I hereby certify that the above entitled cause is one in which the jurisdiction of this Court as a court of the United States is in issue, and I certify the question of jurisdiction alone to the Supreme Court of the United States for decision.

This certificate is made conformably to Section 238 of the Judicial Code of the United States, and this court's memorandum opinion relating thereto is attached herewith and is certified and sent up as a part of the proceedings, together with this certificate.

Dated this 13th day of June, 1924.

Albert B. Anderson, District Judge of the United States for the District of Indiana.

[fol. 134] In United States District Court

[Title omitted]

Opinion—April 4, 1924

Memo. by the Court

When this case was presented to me upon exceptions to the libel, my first impression was that the wharfboat in question was not a vessel within the maritime law, but as the exceptions simply raised the question as to the wharfboat described in the libel, and as the proof of the actual construction, use, etc., of the wharfboat might throw additional light upon the subject, I resolved the doubt in favor of the petitioner and overruled the exceptions. The case was

afterwards put at issue and tried. The evidence is in the record. It was fully argued and has been thoroughly briefed by counsel on both sides.

In my opinion, the structure shown by the proofs and described [fols. 135-140] in the evidence, is not a vessel within the maritime law; that therefore this court is without jurisdiction of this cause, and it should, for that reason, be dismissed.

It is so ordered, and a decree to that effect may be prepared and submitted to the court.

[fol. 141] IN UNITED STATES DISTRICT COURT

[Title omitted]

Transcript of Evidence—Filed June 26, 1924

CAPTION

Be it remembered, That on Thursday, February 28, 1924, at 10:00 o'clock in the forenoon, at the United States Court House, in the City of Indianapolis, State of Indiana, the following proceedings were had in the above entitled cause, before the Honorable Albert B. Anderson, Judge of the District Court of the United States, for the District of Indiana:

Messrs. Welman and Darby appeared as counsel for the Petitioner.

Messrs. Cutler, Kahn and Schmidt appeared as counsel for the Respondents.

[fol. 142] JAMES EDWARD COX, a witness called on behalf of the petitioner, being first duly sworn, testified as follows:

Direct examination.

Questions by John D. Welman, Esq.:

Q. Please state your name to the Court.
A. James Edward Cox.
Q. Where do you live?
A. Evansville, Indiana.
Q. What relation do you have to the Evansville and Bowling Green Packet Company.
A. President of the Company.
Q. Is that a corporation?
A. Yes, sir.
Q. Does it own the wharf boat we have been talking about here?
A. Yes, sir.
[fol. 143] Q. And does it own a line of steamboats?
A. Yes, sir.
Q. Where do they run, or ply?
A. Between Evansville, Indiana, and Bowling Green, Kentucky.
Q. What kind of traffic is carried into those boats and across this wharf boat?

A. A general line of merchandise—all classes of freight—no exceptions, at all.

Q. Where does the traffic come from?

A. It originates from all rail line connections, as well as locally, at Evansville.

Q. Are you a part of a through line of shipments by rail and water?

A. Yes sir. We file a proportional tariff with the rail line from all points of origin, through, from those points to destinations in Indiana, Kentucky and Illinois.

Q. Do any other boats stop at your wharf boat, except those at the [fol. 144] Evansville and Bowling Green Packet Company own?

A. Yes. It is a public wharf boat.

Q. Do all boats plying the Ohio River stop there?

A. Yes sir.

Q. Do they stop there for the purpose of loading and unloading freight?

A. Yes, for the purpose of discharging and loading freight from all points.

Q. Is there any traffic exchanged, there, between boats—that is, traffic come in on one line of boats, and go out on another?

A. Yes sir. Boats from Louisville discharge freight destined for points below, on the Tennessee River, and vice versa, boats from Paducah and Evansville, stop there and bring freight from points on the Green River, and other towns.

Q. As President of that Corporation, do you have anything to do with the operation of the wharf boat? If so, state what.

A. No sir, I haven't charge of the operation of the wharf boat.

[fol. 145] Q. Who has charge of the operation of the boat, as far as the traffic is concerned?

A. Jeff H. Williams is the general agent, and he has charge of the operation of the boat, and Captain T. A. Williams has charge of the maintenance of the boat.

Q. What has been Jeff Williams' experience as a boat man?

A. Well, he has been raised on the river—he was clerk on a boat from the time he was fifteen or sixteen years old, and I think he has been in the business ever since.

Q. Has he ever been a steamboat captain?

A. Yes, he is a licensed master.

Q. What has been the experience of Thomas A. Williams?

A. He has been a master for, I guess, forty years.

Q. I will ask you to state whether they are competent in their business.

A. Yes, I think they are very competent men.

Q. Were they so engaged in May, 1922?

A. Yes sir, and have been, ever since my connection with the boats, [fol. 146] which dates back to 1908, and I know they were engaged in it prior to that time.

Q. As President of the Corporation, was it any part of your duties, and did you inspect the boat and the hull?

A. I went over the boat, myself, every day—every morning, and almost every afternoon.

Q. Where were you on the night that the boat sank?
A. I was in Louisville.
Q. How long had you been there?
A. I had been there several days. My father was very ill, and they called me Sunday morning—the boat sank about five o'clock, I think, in the morning—and they called me between five and six o'clock.
Q. Can you describe that wharf boat to the Court?
A. She was a square hull boat, 243 feet long and 48 feet wide, and has two driveways, the driveways being supported on docks that [fol. 147] are moored to the wharf boat, not resting on the wharf boat, but just moored to her. Trucks drive in one entrance and out the other. She has a cargo box on her that is a protection to freight, and also offices for the deck men and for the general agent. If the steamboats aren't there at the time the freight is received on the wharf boat, it is stored on each side and in the center, leaving gangways for the driveways through, and when the boats arrive they use their own labor in moving the freight from the wharf boat onto the steamboat.
Q. Is there any freight, or traffic, handled there, that is not interstate commerce?
A. No sir, it is all interstate, the boat being in Kentucky, practically all the time.

The Court: The boat is in Kentucky, but tied to the Indiana shore?
The Witness: Yes sir.

[fol. 148] Q. I hand you a picture, marked "Exhibit No. 1—is that a picture of that wharf boat?
A. Yes sir.
Q. When was it taken?
A. It was taken on Tuesday of this present week.
Q. Is that the general appearance of the wharf boat as it was on May 14, 1922?
A. Yes sir, exactly.
Q. In "Exhibit No. 1," state which direction the right hand side of the picture is.
A. It is down the river, and the end that the steamboat is tied to, is down the river—this office end.
Q. I will ask you to look at "Exhibit No. 2," and you may state when that was taken.
A. It was taken the same day—Tuesday, of this week.
Q. The left hand end—what end of the boat is that?
A. It is up the river. "Exhibit No. 2," was taken looking down [fol. 149] the river, and the other view was taken looking up the river.

Mr. Welman: We offer these exhibits in evidence, being the pictures identified by the witness.
Mr. Cutler: The Respondents object to the introduction of these exhibits in evidence.

The Court: I don't know as it makes any difference whether I see them or not. I have seen the old boat many times.

Mr. Cutler: We have no objection to these pictures. I think they are all right, on examining them.

The said photographs, so offered, were admitted in evidence, were exhibited to the Court, marked "Exhibit No. 1," and "Exhibit No. 2," and the same are as follows, to-wit:

(Here follow two photographs, marked side folio pages 149a and 149b)

[fol. 150] Q. How long have you been in the river business or boat business?

A. Since 1908, or 1909—I am not sure which.

Cross-examination.

Questions by Mr. Cutler:

Q. Who are the officers and directors of the Evansville and Bowling Green Packet Company?

A. I am President of the Company, and T. A. Williams—Tom Williams—is the Vice President, and Arthur P. Eberlin, is Secretary; and the directors are myself—and I am Treasurer, too—President and Treasurer—and the other directors are Tom A. Williams, Jeff H. Williams, W. N. Williams, and my wife, Emma Howell Cox.

Q. There are five directors?

A. Yes.

Q. And you are the President and Treasurer of the Company?

A. Yes sir.

[fol. 151] Q. Your wife is one director, and the three Williams brothers are the other directors?

A. Yes.

Q. Thomas Williams is a director, and he is the same person as Captain Thomas A. Williams?

A. Yes sir.

Q. And Jeff Williams is also a director?

A. Yes.

Q. And he is the same person who is designated as Captain Jeff Williams?

A. Yes sir.

Q. Tell the Court what the duties of Captain Jeff Williams were.

A. He acts as general agent and has charge of the clerical work of receiving the freight.

Mr. Welman: We expect to put him on.

A. (continued). He has charge of the hiring of his assistants, [fol. 152] clerical assistants, and the men in charge of the wharf boat—deck men, we call them—day and night.

Exhibit 1
Feb 28, '24
W. H. C.
Reporter.

Page 149a





Exhibit -
Feb 28, 24
W. H. C.
Reporter
Page 149



Q. Captain Jeff Williams hires the deck men?
A. Yes. In fact, he has charge of the wharf boat and its operations. I don't know how to express it any other way.
Q. What are the duties of Captain T. A Williams?
A. He is superintendent of the Evansville and Bowling Green Packet Company, and has charge of the maintenance of the two steamboats and the wharf boat, and looks after our boats and landings and warehouses between Evansville and Bowling Green.
Q. So that the active management of the Evansville wharf boat, in May, 1922, when she sank, was under the direct management and control of Captain Jeff Williams and Captain Thomas A. Williams?
A. Yes, so far as the actual work was concerned.
Q. And they were authorized to employ whatever men were neces-
fol. 153] sary to manage and operate the boat?
A. Yes.

The Court: How many directors were there?
The Witness: Five.
The Court: And they were each of them directors?
The Witness: Yes sir.

Q. These five directors—where do they all live?
A. They all live at Evansville.

The Court: There are three Williams that are directors?
The Witness: Yes sir.

Q. The directors all live in Evansville?
A. Yes.
Q. This Corporation is an Indiana corporation?
A. Yes sir.
fol. 154] Q. Organized and incorporated under the laws of Indiana?
A. Yes sir.
Q. And its principal place of business is at Evansville, Indiana?
A. Yes sir.
Q. Captain Thomas Williams—will you tell a little more fully his duties with reference to the wharf boat? I don't care about the steamboats.
A. It is his duty to make any necessary repairs to her, just as he does with the steamboats. He goes over them every time they are in port, and if there is anything necessary to be done it is his duty to have it done.
Q. Is he supposed to be on the wharf boat all the time?
A. No sir. He is there most of the time.
Q. How frequently is he required to be there?
A. He is supposed to be there, when he is not on one of the boats,
fol. 155] or just away temporarily, all the time.
Q. He is supposed to be there all the time?
A. Yes sir.
Q. And it is his duty to make the necessary inspections of the wharf boat?
A. Yes sir.

Q. And to have the necessary repairs made?
A. Yes sir.
Q. To keep her in good condition?
A. Yes sir.
Q. Is he authorized to spend money in making repairs, to buy materials and employ men, as workmen, to make repairs?
A. On small jobs, yes, but anything that requires any amount of money, it is generally talked over among ourselves—between all three of us—Captain Jeff Williams, Thomas Williams and myself.
[fol. 156] Q. If it was a matter of putting the wharf boat on the dock for any extensive, or elaborate repairs, that would be brought before the whole board of directors, would it?
A. Yes.
Q. But if emergency matters, in the matter of inspection, maintenance, repairs, and the like, he is authorized to take care of those on his own authority?
A. Yes sir.
Q. Where was he when the boat sank?
A. He was on the wharf boat when it sank,—that is, he was right there. He told me he was there. I was in Louisville, and I couldn't say positively where he was. All I know is heresay, so far as the sinking of the boat is concerned.
Q. Where were you when she began to sink?
A. In Louisville.
Q. Attending the Derby, were you?
A. No sir, I was at my father's bedside. He was ill.
Q. What time did you get back to Evansville?
[fol. 157] A. I got there Monday morning.
Q. Now, you were talking about the interstate shipments—through shipments—now, is it not a fact that you—you say you make through shipments of freight?
A. I say we handle through shipments of freight.
Q. But they have to be re-shipped, do they not?
A. They are not re-shipped. Manifests are made—shipments come from the L. & N., from St. Louis, and with an expense bill, and a manifest is made on the wharf boat, showing the charges to destination.
Q. Tell the Court what, if any, of the freight is credited to the wharf boat, for those shipments?
A. No part of the revenue is credited to the wharf boat.
Q. That is a matter between the steamboats?
A. Well, yes, it would be between the rail carriers and the steam-
[fol. 158] boats, but we make the collections from both, and pay the proceeds to them, yes.
Q. The wharf boat account is not credited with any of the freight on through shipments?
A. No sir. She is credited with charges to boats for landing.
Q. And she is not credited with wharfage for through shipments?
A. She is credited with all that, but the only freight she is not credited with is through shipments from Indiana and Illinois to Kentucky, and vice versa.

Q. What part of that is credited to the wharf boat?

A. The wharfage—the charge that is made for freight going across the boat and being received on the boat, pending the arrival of the boats, themselves.

Q. That is to take care of the storage when the freight is left on the boat?

A. Yes, and for the receiving and handling it and doing the clerical [fol. 159] cal work necessary in the interchange of the freight between boats.

Q. But you said a while ago that the work of actually transporting the freight is done by the crew, or the deck hands of the steamboats.

A. That is after the boat arrives. Then they move it from the wharf boat on to their boat, but we handle it when they are not there, —is what I mean.

Q. Now, for that service, for the wharf boat service, you have a separate charge?

A. Yes sir.

Q. Whether it is through freight, or freight originating in Evansville.

A. Yes sir.

Q. There is a separate charge there for the wharf boat charge?

A. Yes sir.

Witness excused.

[fol. 160] JOHN C. WALLACE, a witness called on behalf of the Petitioner, being first duly sworn, testified as follows:

Direct examination.

Questions by Phelps Darby, Esq.:

Q. State your name to the Court.

A. John C. Wallace.

Q. Where do you live? And what is your occupation?

A. I live at Evansville, Indiana, and my occupation has been that of mate of a steamboat for forty years.

Q. On May 14, 1922, what was your occupation?

A. I was the night man on the wharf boat at Evansville.

Q. Is that the wharf boat that belonged to the Evansville and Bowling Green Packet Company?

A. Yes sir.

Q. In the early morning of May 14th, 1922, when, if at all, did [fol. 161] you first discover that the boat was taking water?

A. At three o'clock in the morning.

Q. And just tell the Court what you discovered.

A. I went down into the hull and found more water in her than I had seen in her for some time, or ever had seen in her, and I come on up and——

Q. Were you accustomed to making regular trips into the hull of the wharf boat?

A. Every hour.

Q. On the even hour of each night?

A. Yes sir.

Q. And had you made trips on this particular night, each even hour?

A. Yes.

The Court: Do you mean you went down in, to see if it was leaking?

The Witness: Yes sir.

Q. What did you do when you went down in the hull each hour of the night?

[fol. 162] A. I went down to see the condition she was in, to see if she was making any water.

Q. Did you have a regular trip that you made around the boat?

A. Yes.

Q. How long had you been in the employ of the Evansville and Bowling Green Packet Company, as night man on the wharf boat? How long had you then been in their employ?

A. I have been with them ever since 1910.

Q. And you say you have been a river man for over forty years?

A. Yes sir.

Q. Now, when you found, at three o'clock in the morning of May 14, 1922, that there was more water in the hull of the wharf boat than you had ever seen there before, tell the Court what you did.

A. I come right up on deck and started my three pumps, and got [fol. 163] them in operation.

Q. Did they start immediately, or otherwise?

A. They started immediately.

Q. After starting the three pumps, or putting them in operation, and pumping water, what did you do?

A. I went to work and reported to the "Hazel Rice," and Mr. Gilmore put a siphon in her, and then we called the fire engine, and the fire engine company come down there, and the captain of the engine wouldn't think about coming over on the wharf boat and putting suction in her.

Q. Did you notify anyone else of the trouble?

A. Yes.

Q. Who?

A. Captain Will Williams and Captain Tom Williams.

Q. Tell the Court what you did following three o'clock, up to the time that the boat finally sank.

A. That was about all that I know of. I kept my pumps working, [fol. 164] and I have told about all I could say. Judge—all that I know I did do.

Q. What power operated those three pumps?

A. There were two of them gasoline pumps, and one of them an electric pump.

Q. What power operated the siphon that Mr. Gilmore, the engineer of the "Hazel Rice," put to work?

A. It was propelled by steam.

Q. Steam from the steamer "Hazel Rice?"

A. Yes.

Q. Now, how long was it from the time that you discovered the leaking, at three o'clock in the morning, until the wharf boat settled on the bottom?

A. Five o'clock.

Q. It was five o'clock when it settled on the bottom?

A. Yes sir it was five o'clock when she settled down.

Q. Did the three pumps and the siphon make any headway on [fol. 165] the water that was coming into the hold?

A. It appeared as if it did, and then it looked like it took another lunge.

Q. For about how long did the three pumps and siphon seem to be making headway before it took the new lunge?

A. It looked like, there, for about thirty minutes, that all four of the pumps were holding.

Q. Now, was there anybody else on the wharf boat, except you and Mr. Gilmore, during the two hours?

A. Mr. Gilmore—I telephoned right away, and I come right out and telephoned for Captain Bill to come, and he come, and was there with me, and Captain Tom Williams come. It was along about four o'clock when Captain Tom come.

Q. Were there any other boats moored at the wharf boat?

A. The steamboat "Bay Queen" was laying there. She got in [fol. 166] early. Her fire was already knocked out, underneath her boilers.

Q. She had no steam to operate the siphon?

A. No sir.

Q. Was there any crew there, on either the steamboat "Bay Queen", or the steamer "Hazel Rice"?

A. There was none of the crew around there, only I think the night watchman and some of the niggers over on the "Bay Queen", was about all that there was, on the "Bay Queen".

Q. Was there any other boat moored at the wharf boat, excepting the two you have mentioned?

A. No sir. The steamer "Evansville", up at the head of the wharf boat, was cooled down, and had no wheel on her, and she had no steam, at all.

Q. Was there any steamboat down below the wharf boat?

A. The sand boat was laying down there and she was cooled down, [fol.167] and she didn't have no steam on her.

Q. Was the steamer "Vern Swain" in port?

A. She was laying up there at the landing.

Q. Did she have any steam up?

A. I don't know about that.

Cross-examination.

Questions By Mr. Cutler:

Q. You are still in the employ of the Evansville and Bowling Green Packet Company, are you?

A. That has been probably thirty years ago.
Q. How long?
A. About three years.
Q. With those exceptions have you had any experience, except as watchman on a wharf boat and mate on a steamboat?
A. No— I have given it all to you.
Q. What wages did you receive as watchman on the wharf boat?

[fol. 171] Mr. Wehman. We object to that as immaterial, and not cross examination.
The Court. He may answer.
The Witness. The Judge objected to that, didn't he?
The Court. Well, have you ruled against it? You may answer, and leave me to do the ruling.

A. A hundred dollars a month.
Q. When you went down into the hull of the wharf boat, on the morning she sank, and first noticed that the water was coming in unusually fast, what time in the night was that?
A. Three o'clock in the morning.
Q. You looked at your watch, then, did you?
A. I did, yes.
Q. And you went just exactly on the hour?
A. Yes.
[fol. 172] Q. When was the last time you went, before that?
A. Before three o'clock?
Q. Yes.
A. I would go there at two o'clock, wouldn't I?
Q. I am asking you.
A. Yes, I went there at two o'clock.
Q. What did you notice when you went at two o'clock?
A. I noticed very little water in her—practically no water in her, at all.
Q. About how much?
A. About that much (indicating).
Q. Did you measure it?
A. An inch and a half, I would judge.
Q. Did you measure it?
A. I did, yes sir.
Q. How did you measure it?
A. With a rule.
Q. Did you have a light down there?
A. Yes sir.
Q. What kind of a light did you have?
[fol. 173] A. A flash light.
Q. Now, where did you measure the water in the boat?
A. I measured any place—walking along through her—I could measure any place I wanted to.
Q. Where did you measure her at two o'clock that morning?
A. I just went along and measured her in the outside run, over here.

Q. What do you mean by outside run?
A. The aisles—in one of the outboard aisles, next to the river.
Q. Did you measure any of the other aisles, except that?
A. I did.
Q. Did you find any water in any of them?
A. No sir.
Q. Almost dry?
A. Yes sir.
Q. That was at two o'clock?
[fol. 174] A. Yes sir.
Q. At three o'clock, how much water was there in it?
A. I went down there again, and I judge there was about eight inches of water in her.
Q. Did you measure it?
A. I did.
Q. Where did you measure it at that time?
A. Just above the second door—just above the first door.
Q. What do you mean by the first door?
A. On the outboard side.
Q. Where is the first door on the outboard side?
A. You go into the lower door, down here, and cross over, that would be——
Q. Do you mean the one down stream?
A. Yes sir.
Q. Did you measure it any place else?
A. No.
Q. At three o'clock, what was the condition of the boat as to [fol. 175] whether she was setting level, or whether she was inclined to one side?
A. She was setting all right.

The Court: Do you mean level?
The Witness: Yes sir.

Q. Do you mean perfectly level?
A. Well, she was just listed just the least bit.
Q. How much?
A. It didn't look like she was listed over an inch.

The Court: Could you tell that by looking at it?
The Witness: Yes sir.

Q. Could you tell that from the inside of the hull, or outside of the hull?
A. You could tell that easy enough from the inside of the hull.
[fol. 176] Q. From inside of the hull?
A. Yes sir.
Q. Then, what did you do at three o'clock?
A. Then I come up and started my pumps.
Q. Where are the pumps located?
A. Two in the stern of the boat and one in the head of her.
Q. The stern is down stream, is it?

A. Yes sir.

Q. And you had two pumps down there, and one at the up stream end?

A. Yes sir.

Q. The two in the stern of the boat—tell us a little more definitely how and where they are located.

A. Well, here is one, right here—here is the electric pump, and right after that is the gasoline pump.

Q. Just where is the electric pump located—in what part of the boat?

[fol. 177] A. Right underneath the office there on the outboard side.

Q. How far from the stern of the boat? How many feet, approximately?

A. Not over thirty feet.

Q. And how many feet from the outboard side of the hull?

A. Well, you come right down in the outboard knuckle—the outboard or outside bulkhead.

Q. It is right near the outer edge of the boat?

A. Yes sir.

Q. That pump is located down in the hull, is it?

A. Yes sir.

Q. Where is the motor that operates that pump?

A. Up on deck.

Q. Right above the pump?

A. Yes sir.

Q. Where did you get the power to operate it?

A. We get power from the city.

[fol. 178] Q. A wire runs along over on to the wharf boat from the city lighting plant?

A. Yes.

Q. What other functions does that pump perform? What else does it do besides pump?

A. It don't do a thing—that electric pump only pumps water.

Q. Is that motor used for anything else except to pump water?

A. No sir, only to run that pump.

Q. Don't they have an electric light plant on the boat?

A. Yes sir.

Q. How is that run?

A. From the city.

Q. How about the water supply—don't they have plumbing in the office, and water supply?

A. Yes sir.

Q. What pump furnishes that?

A. That is the city supply.

[fol. 179] Q. That is not pumped by any of the pumps?

A. No, sir.

Q. It is a city supply connected with the wharf boat?

A. Yes sir.

Q. What is the capacity of that electric pump?

A. Well, I really have forgot, right now, sir.

Q. Can you tell, approximately?

A. I just can't think.

Q. Can you tell how much of a stream it throws?

A. She throws an inch and a half stream, yes.

Q. Now, where is the gasoline pump that is near the electric pump?

A. Right back in behind it.

Q. How far from the electric pump is that gasoline pump?

A. Right butted in a head of it.

Q. How many feet from it?

A. Right on top of it—here is the electric pump, right here, and [fol. 180] there is the gasoline pump, right there (indicating).

Q. Two or three feet between them?

A. Well, hardly that. You could just barely pass between the two of them.

Q. Where is the gasoline engine that operates that pump?

A. It is attached on to the pump.

Q. In the hull?

A. No sir, it is up on deck. There is no pump in the hold, only the suction—the things that takes the water up out of the boat. But the pumps, themselves, are located on he main deck.

Q. That is the same deck that the freight is stored on?

A. Yes sir.

Q. These pumps that you have just described—where were they with reference to the office structure?

A. The office is down in the stern of the boat, and I said they was [fol. 181] down underneath the office.

Q. I mean, the motors,—the gasoline engine and the electric motor—were they located on the deck?

A. Yes, on the deck.

Q. And are they near the office?

A. Right underneath the office.

Q. How far are they from where they begin to store the freight?

A. They never put any freight around them pumps.

Q. But how near, or how many feet away do they begin to store the freight, from the pumps?

A. They always leave a gangway around there, of two or three feet, clearance.

Q. There are two doorways, or driveways on the port side, or land side, aren't there?

A. Yes sir.

Q. The driveway that is down stream is the one that is nearest those pumps you have been describing?

A. Yes sir.

[fol. 182] Q. Now, how far are those two pumps from this lower driveway?

A. Well, just like you would shove the outboard door back, and you drive in there, and there is a door right straight across, and you shove that door back, and when you shove that door back you are right against the electric pump.

Q. In other words, the driveway is right near the pump?

A. Yes.

Q. What is the capacity of that gasoline pump?
A. Well, the gasoline pump is a two inch suction and an inch and a half discharge, too.
Q. Two inch suction, and an inch and a half discharge?
A. Yes.
Q. What is the hose power of that gasoline engine?
A. Five horse power.
Q. What make is it—do you know?
A. No, I do not.
[fol. 183] Q. How long has that gasoline engine been in use on the wharf boat, do you know?
A. It has been on there for four or five years.
Q. Do you know whether it was a new engine when it was bought?
A. It was a new pump, yes.
Q. The gasoline engine, I mean—was that new, or second hand?
A. It was.
Q. From whom was it purchased?
A. I couldn't say about that.
Q. Where is the third pump?
A. Up in the head, on the outside corner.
Q. On the outside corner of the upper end of the wharf boat?
A. In the very upper end, just like there in the stern.
Q. The suction of that is in the hull?
A. Yes sir.
Q. And the pump, itself, sets on deck?
[fol. 184] A. Yes sir.
Q. That is inside the cargo box, is it?
A. Yes.
Q. How far is that engine from the upper driveway?
A. It is just like the lower one.
Q. Right near the driveway?
A. Yes sir.
Q. And they store freight close to that?
A. No, there is a gangway left around the pump.
Q. About how much gangway is there?
A. Three feet.
Q. What is the capacity of that pump?
A. She is a three inch suction and three inch discharge.
Q. Three inch discharge and a three inch suction?
A. Yes sir.
Q. That is what you call the large pump?
A. Yes sir.
Q. Were there any other pumps except those three pumps on the
[fol. 185] wharf boat, when she sank?
A. Mr. Gilmore put a siphon pump in her.
Q. I mean on the wharf boat proper.
A. No sir.
Q. Have you, at any time, since you have been on her, had any more pumps than that, on her?
A. No sir.

Q. You say the "Hazel Rice" put her suction pump——
A. A siphon pump.
Q. That was four inch pump, was it?
A. Yes sir.
Q. What size discharge?
A. Well, the same discharge.
Q. Four inch discharge?
A. Yes sir.
Q. Will you explain to the Court, briefly, how the siphon pump operates.
A. It is a great big tin pump and you shove it down in the hold and hook it up with an inch and a quarter steam pipe, and turn [fol. 186] the steam on her.
Q. And the steam forms a vacuum, and then water come out?
A. Yes sir.
Q. This pump that was on the upper end of the wharf boat—that is the one you call the large pump, is it?
A. Yes, that is the big gasoline pump we have, yes.
Q. You have just the two gasoline pumps and the one electric pump?
A. Yes.
Q. What horse power is that engine?
A. It is three horse power.
Q. How long has that been in use?
A. Since about 1915.
Q. That was the time they bought the boat, was it?
A. Yes sir.
Q. And that pump was on it when they bought it?
A. Yes sir.
[fol. 187] Q. You don't know, of course, how long it had been on before that, do you?
A. They bought this pump new, in 1915.
Q. You said a while ago, I understood, that that pump was on when they bought the boat.
A. No, no—this pump was bought in 1915.
Q. Do you know who it was bought from?
A. I suppose it was the Hercules Gas Engine Works.
Q. Was it a new, or second hand pump?
A. It was a brand new pump.
Q. About how often did you operate these gasoline pumps prior to the time of the sinking of the boat?
A. Well, at times, when we didn't have no rain, or anything, at all—a heavy rain come down and naturally run down into the hull, and make waste water, and we used the pumps then.
Q. Did you use these pumps at any time, except after a heavy rain?
[fol. 188] A. No sir.
Q. Do you remembered whether it had rained very much just prior to this sinking?
A. No, we had had no rain.

Q. How long had it happened before the sinking, if you remember, that you used the big pump?

A. I can't remember when I did use the big pump, because I only used the little pumps.

Q. You can't remember when you used the big pump?

A. No.

Q. Had it been several years before?

A. No, it hadn't been that long, but I can't just remember, right now, the time.

Q. Had it been as much as a year before?

A. Oh, yes, it had been—yes, yes.

Q. That is, it had been as much as a year before since you had used it?

A. Yes.

Q. That is, you hadn't used it within a year?

A. No.

[fol. 189] Q. How long had it been since you used the smaller gasoline pump?

A. Oh, sometimes, maybe about once a week.

Q. Whether it rained, or not, you used that, would you?

A. Well, as a general rule, when it rained.

Q. Did you ever use the little gasoline pump when it didn't rain?

A. Sometimes I would use it.

Q. What caused that water to come in?

A. Well, it would be a little seep water.

Q. What part of the boat did it come from?

A. I couldn't say, just exactly what part.

Q. You inspected it every hour, didn't you?

A. Yes sir.

Q. During all the time you have been on there, when you were on duty?

A. Yes sir.

Q. Looking for water?

A. Yes sir.

[fol. 190] Q. But you don't know what part of the hull this water leaked in?

A. Not exactly.

Q. Who else was on the boat at three o'clock that Sunday morning, besides you?

A. The "Hazel Rice's" crew was over on the boat.

Q. But who else was on the wharf boat besides you, at three o'clock?

A. There wasn't nobody—only Mr. Gilmore.

Q. The engineer of the "Hazel Rice?"

A. Yes.

Q. I mean, was there anybody employed by the Evansville and Bowling Green Packet Company on the wharf boat that night, besides yourself?

A. No sir.

Q. How long since there had been anybody on that boat, that night, besides you?

A. There wasn't nobody down there.

Q. When did you go on duty that Saturday night?

[fol. 191] A. Five o'clock in the evening.

Q. Five o'clock Saturday afternoon?

A. Yes sir.

Q. Now, from that time on, there was nobody in the employ of the Packet Company on it, except you?

A. No sir.

Q. When you noticed that she was taking water at three o'clock, what did you do?

A. I started all three of my pumps—I come up out of the hold and started all of my pumps.

Q. How long did it take you to start all of them?

A. Not over ten minutes.

Q. Which one did you start first?

A. I started the two in the stern.

Q. The electric and the smaller gasoline pump you started first?

A. Yes sir.

Q. Then, you went up to the upper end of the boat, to start the other pump?

[fol. 192] A. Yes sir.

Q. Now, the one in the upper end of the boat was the one that had not been used for about a year, was it?

A. Yes.

Q. And that is a gasoline engine?

A. Yes.

Q. It started off all right, did it?

A. Yes sir.

Q. You didn't have any trouble with it?

A. Yes sir.

Q. What do you mean by "Yes sir," to the last question?

A. I said it started off all right.

Q. Did you have any trouble with it?

A. No sir, because he started them every now and then, to know that they would start.

Q. Had it been started on Saturday, before that?

A. We got around every two or three days and started them, to see that they would run.

[fol. 193] Q. I thought you said a while ago that that hadn't been run for about a year, didn't you?

A. Oh, no.

Q. It had not been operated for pumping purposes, but just for testing—is that it?

A. Just for testing.

Q. How long before this had you tested the big pump?

A. Oh, I think it was along about Thursday.

Q. About the Thursday before?

A. Yes sir.

Q. After you started the pumps, what else did you do—what did you do next?

A. I went back and got the engineer to put the siphon in, off of the "Hazel Rice."

Q. The "Hazel Rice" is a steamboat that belongs to the same company that owns the wharf boat, isn't it?

A. Yes sir.

Q. And she was moored alongside of the wharf boat?

[fol. 194] A. Yes.

Q. She had been unloading her freight on to the wharf boat?

A. Yes, she had got her stock off.

Q. Live stock, do you mean?

A. Yes sir.

Q. What was done with that stock?

A. It was drove across the lower stage out to the stock pen.

Q. What other freight did she have besides live stock, that was unloaded?

A. She had some miscellaneous freight.

Q. That was put on the wharf boat, was it?

A. It was put on the bank.

Q. Why was it put on the bank?

A. Because the wharf boat done sunk the next morning, it was on the boat.

Q. When did the "Hazel Rice" get in that night?

A. It was about 1:30 in the morning.

Q. Did she begin to unload her freight as soon as she got in?

[fol. 195] A. She began to unload her stock.

Q. When did she get her stock all off?

A. She got her stock off, I think, along about—just about the time they was running it off, when I asked them about putting the siphon in.

Q. They had got the live stock off about the time you asked them to put the siphon in?

A. Yes.

Q. They drove the stock across the lower end of the wharf boat and on to the land?

A. Yes sir.

Q. What did they do with the freight? They kept on unloading their freight—the miscellaneous freight—did they?

A. They didn't put any more miscellaneous freight on there.

Q. What did they do with that?

A. They kept it on the boat.

Q. They didn't unload it from the "Hazel Rice"?

[fol. 196] A. No.

Q. Now, the suction pump that you got from the "Hazel Rice"—did that work all right?

A. It did.

Q. How long did it work?

A. Until the boat went on down.

Q. All four of the pumps were working, were they?

A. Yes sir.

Q. These gasoline engines make a good deal of noise, don't they?

A. Yes.

Q. And also a good deal of noise of splashing water, when the pump is being operated?

A. Not very much.

Q. Well, you could hear it, couldn't you, when you were on the boat?

A. Yes sir.

Q. The siphon makes a noise, too, doesn't it?

A. No, it don't.

Q. The water does, doesn't it, splashing out?

[fol. 197] A. Yes sir.

Q. What did you do next?

A. I called the fire engine down there, and the chief come down there, and he wouldn't come aboard the wharf boat.

Q. What time did you call the fire chief?

A. At four o'clock.

Q. What time did they get down there?

A. It wasn't over ten minutes before they was there.

Q. As a matter of fact, it was about five o'clock when you called them, wasn't it?

A. The boat sank at five o'clock. I wouldn't have called the fire engine after the boat was sunk.

Q. It was after five o'clock when the boat sank, wasn't it?

A. It was five o'clock on the dot.

Q. You called them down there about a half or three quarters of an hour before the boat sank?

A. I called the fire engine at once—four o'clock.

Q. What house did you call?

[fol. 198] A. No. 2.

Q. That is on Vine Street, just a few blocks away, isn't it?

A. Yes sir.

Q. And they came down there?

A. Yes sir.

Q. What did you request them to do?

A. I wanted them to put a line of hose in her and start to pump.

Q. And you say they wouldn't do it?

A. They said they wouldn't take no chances in driving on there and doing that.

Q. Do you remember who they were—whether they were a captain and a driver, from No. 2?

A. I think Grant was captain of the engine, if I ain't mistaken.

Q. Grant was the Assistant Chief, I believe?

A. Yes sir.

Q. Do you know who the other men were?

[fol. 199] A. No sir.

Q. Did you take any other steps to call for help, except calling the engine house, at four o'clock?

A. No, because it wasn't worth while, because everything else was cooled down.

Q. Was the "Vern Swain" cooled down?

A. I don't think she had any steam.

Q. Do you know about that?

A. It didn't look like it to me, because I didn't see no smoke coming out of her.

Q. Did you know that she had no steam?

A. I wouldn't swear that she did, or did not.

Q. You wouldn't swear either way?

A. No sir.

Q. Did you make any investigation to see whether she was cooled down?

A. I had no time to investigate.

Q. How far was the "Vern Swain" from the wharf boat?

A. She was lying up there at Locust Street.

[fol. 200] Q. What were you doing during that two hours, from three o'clock to five o'clock, when she sank?

A. I was running them three pumps all that time.

Q. When you start them they are automatic and run themselves, don't they?

A. I know they are.

Q. What else did you do?

A. I was watching to see what I was doing with the water.

Q. You were watching the pumps and watching the water?

A. Yes sir.

Q. And you made no call upon anybody, except the fire department and the "Hazel Rice" crew?

A. That is all.

Q. Those are the only ones that you requested to help?

A. Yes.

Q. The "Vern Swain" was about a block up the stream—up the [fol. 201] river?

A. Yes sir.

Q. Did you make any effort to remove any of the freight, or have it removed?

A. I had nobody to move it with.

Q. Wasn't there a crew there on the "Hazel Rice"?

A. The crew had done went up the hill.

Q. You said a while ago that the crew got the live stock off at two o'clock, and they had their freight to unload, and that you then saw the boat was sinking.

A. There was none of the crew there—none of the roustabouts.

Q. You say there were not any roustabouts there?

A. No sir.

Q. Who took this live stock off?

A. The stock men.

Q. Who were they?

A. They come there and unloaded the boat.

[fol. 202] The Court: I think you have pursued that far enough.

Q. Now, did you make any effort to get any of the bystanders to remove any of that freight?

A. There wasn't any bystanders around.

Q. Do you mean to say that there wasn't a crowd of people around the boat there, for an hour before she sank?

A. There was not.

Q. Did any other steamers unload freight on the wharf boat that night?

A. Yes, the "Bay Queen" came in, and she had five packages that she put on there—I think three laundry baskets and two empty cases.

Q. How do you remember that so well?

A. Well, I was there and happened to have the list of it and checked it off when it come off.

[fol. 203] Q. Now, were there any other boats besides the "Bay Queen" and "Hazel Rice", that landed there that night?

A. No sir.

Q. What time did the "Bay Queen" come in?

A. Early in the evening, I judge about eight o'clock in the evening.

Q. Did she lay there all night?

A. She did.

Q. Did she have a crew when she came in?

A. She did.

Q. Did any of them stay on the "Bay Queen"?

A. No sir.

Q. Those boats, the "Bay Queen" and the "Hazel Rice"—did they pull away from the wharf boat before she sank?

A. The "Hazel Rice" dropped away, and the "Bay Queen" never did drop away until the next morning.

Q. What time the next morning did the "Bay Queen" drop away?

[fol. 204] A. She was there when I went home and went to bed, and I don't know what time they dropped her away.

Q. What time did you go home?

A. I went home about seven o'clock.

Q. Do you mean that the "Bay Queen" was tied to the wharf boat, when the wharf boat sank?

A. She was.

Q. And it didn't pull her down?

A. No sir.

Q. She didn't hold the wharf boat up, either, did she?

A. No sir.

Q. What part of the boat was she tied to?

A. She was tied to the upper end.

Q. And the "Hazel Rice" was at the lower end, and she pulled out before the boat sank?

A. She dropped around the bank.

[fol. 205] Q. She had a crew that dropped her around to the bank, didn't she—a pilot and some other help?

A. Yes sir.

Q. How many men were on her when she dropped away from the wharf boat, and down to the bank?

A. I think just an engineer, the pilots and mates was about the only ones that was on her.

Q. They are all employees of this same company?

A. Yes sir.

Q. What, if anything, did they do towards taking care of the wharf boat, or the freight, except they put their suction pumps in it? Anything? Was there any effort made, at all, to unload any of the freight?

A. There wasn't anybody there to unload any of the freight.

Q. Did you try to get anybody?

A. There wasn't nobody around there that you could get.

[fol. 206] Q. Did you make any effort to telephone, or to get anybody?

A. I went up on the hill, and I couldn't get anybody. There was no niggers up on the top of the hill.

Q. I thought you said a while ago that you stayed there with the pumps.

A. Well, I stepped right out to the end of the stage and hollered two a couple of niggers, out there.

Q. What time did you get any of the officers of the boat down there? Who was the first one that came?

A. Captain Will Williams come down.

Q. How long did he get there before the boat sank?

A. He was there about quarter of three o'clock—about quarter of three.

Q. What did he do toward removing any of the freight—anything?

A. No, he couldn't carry any of the freight off of her.

Q. And he didn't have anybody else carry any off, either, did he?

[fol. 207] A. There wasn't nobody there to carry any of it off.

Q. What did he do, if anything?

A. He helped ship a pump up.

Q. What do you mean by that?

A. Put a siphon pump up.

Q. From the "Hazel Rice"?

A. Yes sir.

Q. How long did it take to rig up that pump?

A. Not over ten minutes.

Q. Then what did he do?

A. Well, I don't know. I never paid no attention to what he done.

Q. Do you know whether he did anything else?

A. I wasn't following him around, because I had my line of work to look after.

Q. How long before the "Hazel Rice" dropped down to the bank was it that she took her siphon out?

A. She never did take her siphon out.

Q. Just left it and it went down with the boat?

[fol. 208] A. The coupling had busted and it went on down with the boat.

Q. The coupling busted?

A. Yes sir.

Q. How long after the pump was put in, was it when the coupling busted?

A. When the boat went to go down, is when it busted.

Q. How long was that after the pump had been put in?
A. Oh, I suppose an hour.
Q. Do you know what caused the busting of the coupling?
A. The sinking of the boat.
Q. I thought you said a while ago that the boat dropped down before the wharf boat sank.
A. I said that when the wharf boat sank she dropped around to the bank.
Q. She didn't drop around there until the boat sank?
[fol. 209] A. No.
Q. What other officers of the Company did you get down there at the time of the sinking?
A. Captain Tom Williams come at four o'clock.
Q. When did you first phone him?
A. I think it was about 3:30, that I telephoned him.
Q. Did you get him?
A. I did.
Q. Why did you wait a half an hour before phoning him?
A. Well, I didn't know why I did, but I done it.
Q. Was he the first one that you phoned?
A. I told you a while ago that I called Captain Will, at three o'clock.
Q. And the other captain you called at 3:30?
A. I did.
Q. You had a telephone right there on the wharf boat?
A. Yes sir.
[fol. 210] Q. What did he do when he got down there?
A. He looked around and tried to get help, and he couldn't get no help.
Q. Who did he try to get help from?
A. He tried to get the steamer "Sanco," a tow boat.
Q. Where was she?
A. Laying down at Fulton Avenue.
Q. Did he try to get the "Vern Swain," that was a block away?
A. I couldn't say about that.
Q. Do you know of anything else he did?
A. I do not.
Q. You and the other Captain Williams were there all the time, until she sank?
A. They were.
Q. The water was quiet that night—there wasn't a storm?
A. It was.
Q. There wasn't any wind?
[fol. 211] A. No wind.

The Court: I think the cross examination has gone far beyond the direct examination.

Q. Just one more question. Now, between five and six o'clock on Saturday evening, do you say that there were none of the pumps in operation?
A. No sir.

Q. None at all?
A. No sir.

Redirect examination.

Questions by Mr. Darby:

Q. If you know the stage of the river on the Government guage, at the time of the sinking of the wharf boat, tell the Court what it was.
A. It was nineteen and eight tenths on the guage, at Evansville.
[fol. 212] Q. Is that about a medium stage of the river?
A. A medium stage.
Q. Now, tell the Court about how many feet from the water's edge, at that stage of the river, the shore side of the wharf boat is put.
A. At about thirty-five feet.
Q. And what is in between the shore side of the wharf boat and the landing?
A. It would be the docks.
Q. Sometimes called the floats?
A. Yes sir.
Q. And what else?
A. And spars.
Q. And a stage plank, or apron, that extends out?
A. Yes.
Q. What was the use of the spars?
A. To shove the boat *out*, on a falling river.
Q. On the day preceding the 14th of May, 1922, what, if anything, was done with the spars?
[fol. 213] A. Well, I think on the morning of the 13th—I am satisfied my partner shoved her out.
Q. The river was falling, at that time?
A. Very slowly—at a very slow stage.

Witness excused.

CHARLES B. GILMORE, a witness called on behalf of the Petitioner, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Darby:

Q. Please state your name to the Court.
A. Charles B. Gilmore.
Q. Where do you live, and what is your occupation?
A. I live at Louisville, Kentucky, and my occupation is marine engineer.
[fol. 214] Q. If you were working as a marine engineer in the month of May, 1922, tell where you were working.
A. On the steamer "Hazel Rice," at Evansville, Indiana.

Q. Were you working as engineer on that steamer on the night of May 13th, or early morning of May 14th, 1922?

A. Yes sir.

Q. If you, about three o'clock on that morning, or at any time after three o'clock, on the morning of May 14th, 1922, were notified that the wharf boat was taking water, tell the Court who notified you, and what you did.

A. Well, I couldn't say who notified me, because he called me from outside of my room, up in the cabin.

Q. You were in the cabin of the "Hazel Rice"?

A. Yes. I was in bed, at the time, and somebody knocked on the door, and said, "Gilmore." I said, "Well." He said, "Get up [fol. 215] quick, the wharf boat is sinking." And I got up and slipped my pants and shoes on, and I never took time to lace them, and I went down and got over on the wharf boat, and seen that all the pumps were in operation, then, and then I ran back and grabbed an axe and cut a hole in the deck of the wharf boat and put in a four inch Eureka siphon, in there.

Q. Tell the Court what you mean by the deck of the wharf boat.

The Court: I understand that, perfectly.

Q. The inside bow of the wharf boat?

A. Yes.

Q. What kind of siphon was this?

A. It was a four inch Eureka steam siphon.

Q. And how long did it take you to install the siphon in the inside of the wharf boat?

[fol. 216] A. Well, it wouldn't have took over ten minutes to connect the siphon up, but it took me about five minutes, or probably a few minutes longer to cut the hole with the axe.

Q. And how soon after the hole was cut, and the siphon was installed, did it begin to pump water?

A. Immediately.

Q. How long did you continue to operate the siphon, with reference to the sinking of the boat? The final sinking of the boat?

A. Well, I let the siphon operate until the boat settled down, and as the boat settled the union on the siphon broke. I was afraid of it taking the pipe down from the boiler, and I went for the axe to hit the pipe, to make it break, then, because I didn't want to see anybody get scalded, but before I got back the union pulled in two.

Q. Did you stay there until the boat settled?

A. I did.

Q. About what time did it settle on the bottom?

[fol. 217] A. About five o'clock.

Q. Where was the "Hazel Rice"?

A. At the lower door—at the outside door.

Q. Had the "Hazel Rice" dropped away?

A. Not until the next morning, after the boat had settled—about seven o'clock, I think it was.

Q. Did you observe the three pumps on the wharf boat during

the time you were operating the siphon—whether they were running and pumping water, or not?

A. Yes sir, all three of them were pumping.

Q. And they continued to pump until the boat settled?

A. Yes sir.

Q. During the time that you were operating the four inch siphon, where was the crew of the "Hazel Rice," if you know?

A. Well, what do you mean by the crew? The rousters, or the officers?

Q. The rousters and the officers both.

[fol. 218] A. Well, I think there was one of the pilots went home, and there was myself and the second engineer and watchman and captain was there.

Q. How many siphons did the "Hazel Rice" have?

A. She only had one—a four inch siphon.

Q. Is that all that is carried by a boat of that size and capacity?

A. That is all we carried—what we could move around—of course, there was more siphons on the boat, but they was stationary.

Q. Where were the roustabouts when the boat landed? Where were they during that night, while you were operating the siphon?

A. They were up the hill. They had gone home, I suppose.

Q. When did the "Hazel Rice" land at the wharf boat?

A. Well, I think it was about one, or 1:30—I won't say positive, because I never timed it.

Q. How much of a cargo was unloaded that night?

[fol. 219] A. There wasn't a thing taken off, that night, only the live stock.

Q. And who took the live stock off?

A. I don't know.

Cross-examination.

Questions by Mr. Cutler:

Q. When you were called were you requested to put in your siphon pump?

The Court: What difference does that make? He was called, and he put in the siphon. What is the use taking up so much time? I think I can see what happened.

Q. What did you do when you were first called? What was the first thing you did?

The Court: He put on his pants, he said.

[fol. 220] A. The first thing I done was to put on my pants and my shoes, and I went over to the wharf boat and I seen all the three pumps were working and I grabbed the axe——

The Court: Don't repeat it. I have heard it.

Q. Before you made any effort to install your four inch suction pump, you went all around the boat, 240 feet long, to see whether these little pumps on the boat were working—it that true?

A. Yes sir.
Q. Before you made any effort to install your big pump?
A. Yes sir. The reason I done that——

The Court: No, you are not asked to give your reasons. Just answer the question, or we will never get through.

Q. Your boat, you say, is equipped with this four inch pump, [fol. 221] and it also has some other pumps?
A. Yes sir.
Q. What sizes were those?
A. From an inch up to two inches.
Q. How many?

Mr. Welman: We object to that as not cross examination.
The Court: He may answer it. We will get through quicker.

A. I think we had seven siphons on the steamer, "Hazel Rice".
Q. The largest was the four inch, and then you had some inch and a half?
A. No sir, one inch and two inch.
Q. And was that the only dimensions you had?
A. Yes sir.
Q. How large a boat is the "Hazel Rice"?

[fol. 222] Mr. Welman: We object to that, your Honor.
The Court: He may answer.

A. Well, I don't know. She is about a hundred and thirty some odd feet long, I suppose.
Q. How wide?
A. About twenty-five or thirty feet wide, or possibly more.
Q. How deep?
A. I think she has about a four or five foot hold.
Q. The wharf boat is about some ten times as big in capacity, as the "Hazel Rice"?

The Court: Don't argue with the witness. You can argue that to the Court.

Q. What other pumps did you have, except the siphon pumps on the "Hazel Rice"?
A. We have boiler feed pumps.
Q. What are they—just briefly?

[fol. 223] The Court: I know what a boiler feed pump is. Don't waste your time on that.

Q. These men that you have named—these men that you say were on the "Hazel Rice"—yourself, and the engineer and the watchman and the captain—they are all employed by this same Company, the Evansville and Bowling Green Packet Company, aren't they?
A. Yes sir.

Mr. Darby: And in whose employ are you now?

The Witness: I am working for the Government at the present time, on the Louisville and Portland Canal.

Witness excused.

[fol. 224] THOMAS A. WILLIAMS, a witness called on behalf of the Petitioner, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Darby:

Q. You may state your name to the Court.
A. Thomas A. Williams.
Q. Where do you live and what is your occupation?
A. I live at Evansville, Indiana; steamboat man.
Q. What connection, if any, do you have with the Petitioner, the Evansville and Bowling Green Packet Company?
A. I am superintendent and Vice President of the Company.
Q. And you were such in the month of May, 1922, were you?
A. Yes sir.
Q. How long have you been a steamboat man?
[fol. 225] A. More than twenty years—more than thirty years.
Q. What is your age?
A. I am sixty-three years old.
Q. Tell the Court, briefly, the experience you have had in the steamboat business.
A. I filled the different capacities, pilot, engineer and master, on different packets on the Kentucky River, and some on the Ohio River.
Q. What is your particular work with the Evansville and Bowling Green Packet Company, now, and what was it in May, 1922?
A. I looked principally after the repairs of the property, the steamboats and the wharf boats and warehouses and stock pens, and helped keep the crews on the boats. That is my principal work, and has been for the last ten or twelve years.
Q. Where were you in the early morning of May 14, 1922?
[fol. 226] A. I arrived at home at one o'clock, from Paducah, Kentucky, and I was called at three o'clock—that is, the phone rang and awakened me, and it was Jeff Wallace, the night watchman on the wharf boat, called for my brother Will.
Q. He lives at the same house with you, does he?
A. Yes.
Q. And he gave the message about the wharf boat, did he?
A. Yes. He told him the wharf boat was leaking—had sprung a leak, and wanted him to come down.
Q. Did he leave home?
A. He left home, yes sir. He called a taxi and left.
Q. Did you and he leave together?
A. No sir, I didn't go right away. He suggested that I wait. He didn't think it was necessary as I had been up that night.

Q. You had been traveling on the train until one o'clock?
[fol. 227] A. Yes, and he called me at four o'clock, and he said I had better come down.

Q. The watchman, Wallace, called you, did he?

A. No, my brother Will called me, and I called a taxi and dressed as soon as I could, and I got down there a few minutes after four.

Q. What did you find on your arrival at the wharf boat?

A. I had the taxi wait until I could run down and see, and my brother hollered at me, and he said, "See if you can't get a tow boat. I am afraid she is going to sink." And I ran back and got in the taxi and drove down to Nugents Landing and run over to the steamer "Sanco," to see if I could get them, and their steam was down, and it being Sunday morning, the crew had gone home, and they had let the steam go down, and I went back to the taxi and drove up the river to the steamer "Nellie," that was laying [fol. 228] there, just above Nugents, and that was all cooled down, and no crew there, and then I went back up to the wharf boat—jumped back in the taxi and drove back to the wharf boat, and when I got down there I seen it was too late to try to get any one else.

Q. What was the condition of the wharf boat at the time, that led you to that conclusion, when you got back?

A. The lower outside corner was pretty low in the water. I could see that the lower end of the wharf boat was deepest, and it looked like there might be considerable amount of water in it.

Q. And it was beyond saving?

A. It was, yes, by that time—nearly five o'clock.

Q. What did you do then?

A. We didn't do anything more. I ran down to the wharf boat and they hollered at me, and said it was settling, and there was nothing more to do.

[fol. 229] Q. When you first reached the wharf boat after you had come from home, who did you find there?

A. My brother hollered at me first—Brother Will—I don't remember who else I seen. There wasn't many there.

Q. Did you observe what was being done in the way of pumping?

A. No sir, I didn't run on the wharf boat.

Q. Were you there when the boat was raised, and the exact cause of the sinking was ascertained?

A. No sir.

Q. Where were you?

A. I was at Paducah, Kentucky, looking after the steamer——

Mr. Kahn: We object to that.

Q. When you were at the wharf boat at four or five o'clock, if [fol. 230] there was any laborers about the wharf boat—any roustabouts—tell the Court about it.

A. No sir, there was very few around—or any one—there were no rousters, as I seen. It was early in the morning—Sunday morning—and they don't come around.

Q. Where, if you know, is the Government guage, with reference to the foot of Main Street?

The Court: Well, you have answered the question, that they were not there.

A. It is located just above the wharf boat, about a hundred and fifty feet, or something like that.
Q. What is the flood stage on the Government guage?
A. Thirty-five feet.
Q. And what was the stage of the river at the time of the sinking of the wharf boat?
[fol. 231] A. It was something like nineteen feet, is my recollection—maybe a little more.

The Court: We will take a recess until two o'clock.

Whereupon, the Court took recess until two o'clock this afternoon.

[fol. 232] Thursday, February 28, 1924—2:00 o'clock P. M.

The Court met pursuant to adjournment, and the trial of the cause was resumed, as follows:

THOMAS WILLIAMS, a witness on behalf of the Petitioner, being recalled, testified as follows:

Direct examination (resumed).

Questions by Mr. Darby:

Q. You are the Thomas A. Williams who was on the stand at the time we adjourned at noon?
A. Yes, sir.
Q. The steamer, "Hazel Rice," was under your supervision for the petitioner packet company, was it?
A. Yes.
[fol. 233] Q. Tell the Court what kind of siphons the "Hazel Rice" had, in May, 1922.

Mr. Kahn: Your Honor, we object to that as——
The Court: He may answer.

A. We had about six or seven siphons. I don't know the exact number—placed in there to blow out the water—the seepage—some on each side of the boat—small sizes.
Q. How many of those six or seven siphons were removable?
A. None of them. They are stationary, and part of the boat.
Q. Was there a four inch siphon on the boat, that was removable?
A. Yes sir.
Q. And was that the only siphon then on the "Hazel Rice," that was removable?

[fol. 234] A. I think one was all we had—one extra one—a four-inch one.

Q. And is that four inch siphon the one that was put into the wharf boat at the time of the sinking?

A. Yes.

Q. Now, how long have you been in the business of repairing, or supervising repairs and maintenance work, generally, on boats, or water crafts, on the Ohio River?

A. Thirty years, or more.

Q. How long have you been acquainted with this Evansville wharf boat?

A. In 1910, I superintended the repairs of it, at Madison, Indiana.

Q. And, briefly, what was the nature of the repairs in 1910?

A. We give her a thorough overhauling, caulked her well, and took out all the decayed timbers.

Q. On the ways, at Madison?

[fol. 235] A. On the Madison ways, yes.

Q. For what company did you supervise the overhauling and repairs on the ways at Madison, in 1910?

A. That was the Louisville Transportation Company.

Q. You were then connected with that company?

A. Yes, jointly with the Evansville and Bowling Green Company.

Q. That company went out of business at that time?

A. Yes sir.

The Court: Why all this detail?

Mr. Darby: Just the history of the wharf boat, your Honor.

The Court: He could tell that without telling when the company went out of business. I don't care about that.

Q. From 1915, on, what occasion was there, if any, for you to inspect the hull of this wharf boat from time to time?

[fol. 236] A. It was my duty to go over the wharf boat, as well as the other steamboats, and have such repairs made as I deemed necessary.

Q. Did you do that from time to time, from 1915, to the date of this sinking?

A. Yes sir.

Q. Do you know what the condition of the hull of this wharf boat was, at the time, and imediately before the sinking, on May 14, 1922?

A. It was in fairly good condition. It seeped a little bit, but not much—it was considered seaworthy.

Q. What was your opinion, at the time, as to its seaworthiness?

Mr. Kahn: We object to that as a conclusion, your honor.

The Court: He may answer.

A. I considered it seaworthy.

[fol. 237] Q. And did you later ascertain the exact condition of the bottom of the wharf boat?

A. Yes, at Mound City, Illinois.

Q. And what was done to it at Mound City?

A. To the bottom?
Q. Yes, what was done to the bottom?
A. Well, we caulked it good, and took out a few planks—not many.
Q. And who did that work at Mound City, Illinois?
A. Dan O'Sullivan, superintendent of the ways, did.
Q. And he was superintendent on behalf of what company?
A. Of the insurance people and the owners.
Q. The ship building people?
A. Yes. He superintended the work for the Howard Ship Yard Company.
Q. At Jeffersonville, Indiana?
A. Yes, that is their headquarters—at Jeffersonville.
Q. What did you find, on examination, at Mound City, to be the [fol. 238] condition of the bottom of the wharf boat?
A. It was in fairly good condition, when I got to it. They had it caulked all over, and repaired. They had took off one streak of plank, to wash the mud out, after it was sunk, and that plank went back on the boat, and some of it was put on new, and the holes were all caulked up, good.
Q. Did you see the broken place in the bottom of the wharf boat?
A. I seen it, yes sir.
Q. Describe to the Court the nature of the broken place in the bottom of the wharf boat.
A. It was pressed up—it settled on something that had pressed the bottom, and it broke the floors and cross timbers—just sprung them up, and caused the big leak there.
Q. What kind of planks had the bottom of the wharf boat?
[fol. 239] A. They were white oak.
Q. What size and thickness?
A. They were originally four inches. They were about three and three quarters thickness, and something like eighteen inches wide, and about an average of about forty feet in length.
Q. Preceding the sinking, how recently had you had repairs made to the hull of the wharf boat?
A. Well, every few months we would go around the boat, and in the fall, before, we give it pretty good repairs.
Q. Tell the Court what repairs were done to the hull of the wharf boat, last preceding the sinking of the boat?
A. We had light water, and we put in some new planking and caulked it clear around the boat.
Q. When, if at all, was any concreting done?
A. That was in 1921—in the summer and fall of 1921,—we started to put some concrete in a few places, and then decided to go all the [fol. 240] way around. It seemed to be a good job, and it looked like it would make it more secure.
Q. Was that concreting done on the inside of the hull?
A. Yes sir.
Q. What was the purpose of it?
A. To stop the seepage and make it more secure, and make it safer.
Q. Was that the proper thing to do?

A. It is frequently done, to stop leaks and stiffen them.

Q. If there were any leaks that time, in 1921, what was the nature of the leaks?

A. Just seep water—heavy trucks run over there would cause it to leak, some.

Q. And when was that concreting done?

A. It was in 1921—it was in the summer and fall of 1921—I don't know the exact date.

Q. After the boat was raised, when you examined the timber, if you [fol. 241] did, at the location of the broken place in the bottom, what was the condition of those timbers that were broken?

A. Well, they were fairly sound and tough—good timbers.

Q. Was that a smooth break, or otherwise?

A. No sir, it was splintered up.

Q. And about what was the size of that break?

A. There was three planks pushed up, and it left a hole, I judge, ten feet long, and about two feet wide—that is, it would amount to about two feet long.

Cross-examination.

Questions by Mr. Schmidt:

Q. You were an officer and director of the Petitioner, Evansville and Bowling Green Packet Company, in May, 1922?

The Court: He has testified about that.

[fol. 242] Q. The wharf boat was not inspected by any United States inspector, was it?

A. No sir.

Q. It didn't have any water tight, compartments or bulkheads in it, at all did it—it was all open face, wasn't it?

A. No sir.

Q. Her depth was about ten feet, wasn't it?

A. Six feet.

Q. What was the depth from the bottom of the hull to the light water line?

A. It was in the neighborhood of eighteen or twenty inches—I don't know exactly.

Q. That light water light would be governed by the amount of cargo in it, would it not?

A. It would be light, without any cargo.

Q. With a load of fifty tons, how far down would that cause her to settle?

A. Oh, two or three inches.

[fol. 243] Q. In other words, about six inches for every hundred tons?

A. I guess that would be about it—approximately that, maybe.

Q. The trucks that went on to this wharf boat to unload their cargo—can you state about how many a day were in the habit of going on and off there?

A. I don't know.

Q. When they went on they caused the boat to surge up and down, which had a tendency to produce seams, didn't it?

A. Some, yes.

Q. The greater part of the year this wharf boat maintained about an even level, did it not?

A. Well, only at the times the boat would be loaded, it would be level, or nearly so.

Q. The boat would go up and down, in proportion to the amount of cargo that was put on it, would it not?

A. Yes sir.

[fol. 244] Q. But there was a normal cargo, day in and day out, wasn't there?

A. Not every day.

Q. About how much would it vary, above and below the light water line?

A. Oh, possibly six inches.

Q. Above that six inches, which is about two feet from the bottom, the seams would be out of the water, wouldn't they?

A. Yes.

Q. Those are what would be called dry seams, are they not?

A. Yes.

Q. And the dry seams, if they were suddenly submerged, would leak, would they not?

A. Unless you get them caulked up tight.

Q. Specifically, and definitely, what repairs were made during the month of May, 1922, on the wharf boat?

A. I don't recall any special repairs in that month.

[fol. 245] Q. Were any made in April, 1922?

A. I am not positive.

Q. Were any made in February?

A. We repaired it——

Q. Answer the question.

A. I don't recall that.

Q. Were any made in March, 1922?

A. I have no records to show.

Q. Were any made in January, 1922?

A. None in January.

Q. Were any made in December, 1921?

A. I haven't any record to show when it was made.

Q. And you don't know, otherwise?

A. No sir. We made repairs whenever it was necessary to make repairs.

Q. And you were in charge of it?

A. Yes sir.

Q. Were any made in November, 1921?

A. I expect there was—I don't know positively.

[fol. 246] Q. Were any made in October, 1921?

A. I can't recall what time they was made, because I kept no records.

Q. Your answer is that you don't know?

A. I am not positive.

Q. Now heavy trucks driving on and off this wharf boat, would also have a tendency to cause dry seams, and other seams, to exist there, would it not?

A. Not very much—just the vibration, possibly, would cause a little bit.

Q. And trucks did drive on and off all day long, every week, and sometimes on Sunday—that is correct, isn't it?

A. Not much on Sunday, and not every day, but some almost every day.

Q. Were there any particular days when they didn't drive on?

A. No sir, no particular days—only there wouldn't be any boat out there.

[fol. 247] Q. They went on as long as the boat was continuously in use, didn't they?

A. As long as there would be a boat there to receive freight.

Q. How many years was that boat so continuously in use, at Evansville?

A. Since 1910.

Q. Now, that was in 1910, that this craft had been on the ways at Madison?

A. Yes, in 1910, and brought to Evansville.

Q. Had the craft ever been put on dry dock since 1910, until May 14, 1922?

A. No sir.

Q. Had it ever been taken to the ways?

A. No sir.

Q. Had it ever been taken out of the water?

A. No sir.

Q. So that your repairs that you have testified about, were those that were necessarily made from the interior—is that correct?

[fol. 248] A. Not altogether interior. We took the planks and the borderline, and leaned the boat over and took some of this plank out, if necessary, and put in new planks.

Q. You don't mean to tell the Court that you made any repairs on the bottom of the boat?

A. No sir, on the sides of the boat.

Q. You couldn't caulk the seams on the bottom, while it was in the water, could you?

A. No sir.

Q. And you didn't, since in 1910?

A. Not under water, no sir.

Q. And when you caulked it in 1910, at Madison, Indiana, you caulked it from the outside, didn't you?

A. Yes sir.

Q. And, again, in 1922?

A. Yes sir.

Q. After it had sunk and been raised?

A. Yes.

[fol. 249] Q. Now, these seams in these planks, sloped from without inward, did they not? In other words, the largest opening of the seams was on the outside?

A. Certainly.

Q. And the smallest space was on the inside?

A. Naturally.

Q. The purpose of this caulking is to drive it in and plug up the seams,—that is correct, isn't it?

A. Yes sir.

Q. And that can only be done on the bottom part of the outside?

A. Successfully—you can't caulk it from the inside, very well.

Q. The hull of this wharf boat leaked continuously, did it not?

A. No sir—just seeped; no big leaks; it would seep water.

[fol. 250] Q. How much would it seep?

A. Oh, not much—just a few barrels, maybe, a day—or, possibly, not that much—not enough to notice.

Q. How high did you concrete it?

A. Up to light water.

Q. That would be eighteen inches from the bottom?

A. Eighteen or twenty inches.

Q. And about how thick would that be, inboard, from the side?

A. They filled it in to what we call the bilge keelson—that would be about eight inches. The frame was about eight inches and we filled it up.

Q. This concrete would be about eight inches thick and about eighteen inches high?

A. Yes sir.

Q. All around the entire interior of the hull, 245 feet, on the two long sides, and 48 feet wide, at the two ends?

[fol. 251] A. Yes, it spread out at the bottom, becoming wider at the bottom.

Q. You felt it necessary to do that to prevent seepage?

A. We didn't start to do that—we were only going to concrete a few places, but after we started it looked like it would make it safer, and——

Q. You thought it was necessary to do it?

A. We did, in a way. We thought we would like it better. It wasn't absolutely necessary.

Q. Did you reinforce this concrete with steel rods?

A. No sir.

Q. Just the bare concrete?

A. Yes, cement and sand.

Q. Were the forms on the concrete removed after the concrete was installed?

A. Not all of them.

Q. Which were left?

[fol. 252] A. We made forms with very light lumber—shingles, and things like that.

Q. Which forms were left?

A. I don't know which were left.

Q. It was several weeks afterwards?

A. Yes sir.

Q. And you didn't see it until about a month afterwards did you—July 9th?

A. It was July 9th when I was down there. I was on other work up at Paducah.

Q. And while it was on the ways at Mound City, or out of the water—they had to take it out of the water to repair it, didn't they?

A. Yes sir.

Q. You saw this hole there that you speak about?

A. Yes sir.

Q. And it was repaired at Mound City, and was brought back to Evansville? And is now at Evansville?

A. Yes sir.

[fol. 256] Q. At Mound City, you — put in charge of a high class ship building force, the you not—you considered them so?

A. Yes sir.

Q. And you thought they would take proper precautions to put it in proper shape, did you not?

A. Yes sir.

Q. And I will ask you whether they caulked it with concrete.

A. Sure not.

Q. Why not?

A. Well, it is not customary. They repaired it with concrete, but we could do that in the water. They never put concrete on a boat while it is in the ways.

Q. Then, caulking with concrete is an emergency matter, isn't it?

A. Well, it is a precaution.

Q. It is an emergency matter?

[fol. 257] A. No altogether an emergency matter. It is used usually.

Q. It is a temporary expedient, isn't it?

A. Well, yes.

Q. The United States Hull inspectors would not permit you to make the "Hazel Lee" that way, would it? With concrete?

Mr. Darrow. Objected to.

The Court. Sustained.

Q. Did you consider this caulking of the wharf boat in the summer of fall of 1921, as good seamanship?

A. That is done in many cases, and I considered it all right.

Q. Did you ever caulk any of your boats that way—any of your vessels?

A. Not all the way around. We have caulked them for just a temporary repair.

[fol. 258] Q. Just a temporary measure?

A. Yes, until such time as the boat would go on the ways, and then it would take it out, put like we did in this case.

Q. Did you take this boat to the ways before it sank?

The Court. There is no question about that.

A. That has been asked a dozen times—no.

Q. How long did you know this particular wharf boat before 1910?

A. I don't just recall—it was at Louisville, Kentucky.

Q. About how many years?

A. About ten years.

Q. About ten years before 1910?

A. Yes sir.

Q. And where had it been before that?

[fol. 259] A. Hopefield, I have been told. I am not positive. It was built new, and taken there.

Q. When was it built?

A. In 1884.

Q. And built of wood, throughout?

A. Yes sir.

Q. This wharf boat did not carry any cargo, or passengers, at Evansville, did it—ever?

A. It cannot. We store and transfer freight.

Q. It didn't make any voyages and trips up and down the river?

A. No sir.

Q. It didn't have any engines, machinery, or power of propulsion?

A. No sir.

Q. It didn't have a rudder, or steering gear?

A. No sir.

Q. And it didn't have any of the other paraphernalia that a river steamboat would have on it, did it?

A. No sir. It is a wharf boat.

[fol. 260] Q. I hand you "Petitioner's Exhibit No. 1," and I will ask you to state whether it had any of those smokestacks, or pilot house on it, before it sank,—which might seem to be on it, in this photograph.

A. That is a boat laying on the outside of the wharf boat. That is the "Bay Queen."

Q. Yes, and the superstructure, there, is substantially the same as it was before it sank?

A. Yes sir.

Q. I hand you "Petitioner's Exhibit No. 2," and I will ask you to state whether the smokestack, pilot house, and other portions of a steamboat, appearing on the center of the photograph, were, prior to the sinking, a part of the wharf boat.

A. No. That is part of a steamboat lying on the outside—it is the "Bay Queen."

Q. In fact, from the time it arrived at Evansville, in 1910, until it went on the ways at Mound City, in 1922, it was never away from the [fol. 261] wharf at *at* Evansville, except during the winter time, for a brief period, to go into the ice harbor, in Green River—isn't that correct?

A. Yes sir.

Q. And then it was towed by a tow boat, or other vessel, besides itself?

A. Yes sir.

Q. Now, it was fastened to the land by how many cables, or chains?
A. There was four chains, and sometimes five.
Q. And the only movement which it made, or of which it was capable, was that due to the rise and fall of the river—isn't that correct?
A. Yes.

Redirect examination.

Questions by Mr. Darby:

Q. I omitted to ask you if you observed the extent of the cargo of merchandise on the inside of the wharf boat at the time of the sinking.
[fol. 262] A. How is that?
Q. Did you observe the extent of the merchandise and cargo that was inside of the wharf boat, at the time of the sinking?
A. I seen it immediately after it sank.
Q. About what proportion of the entire capacity of the boat did the cargo constitute, or make, in the wharf boat?

Mr. Kahn: To which we object, for the reason that the witness has testified that——
The Court: He may answer. I want to know myself.

A. About how much was out of water?

The Court: How much of a load did it have on it when it sank, is the question.
The Witness: It proved to be about a hundred and fifty tons of freight.

[fol. 263] Q. Did that half fill the wharf boat, or one quarter, or one fifth, or what?
A. It was about one quarter full.
Q. From your thirty years, or more, of experience in the steamboat business, are you acquainted with the amount of labor and length of time it takes to unload boats of that character, of their cargo, by hand?
A. Yes sir.
Q. In your opinion, assuming that twenty-five men—able bodied men, had been available to unload the cargo from this wharf boat, out on the river bank, before the sinking, what length of time would have been required to have done that work?
A. It would have took fifteen or sixteen hours' labor of twenty-five men—approximately that—to have carried the freight and stored it on the bank.
Q. The auto trucks came on the wharf boat only when the steam-
[fol. 264] boats were being loaded, or unloaded, or laying——
A. On outgoing trips, as a rule, they would bring the loads in for the outgoing trips.
Q. How many days a week did the boats go out?

The Court: I think we have gone into the details enough, on that.

A. Well, two days, and part of the time, four days—that was the busy days—Mondays, Thursdays, Wednesdays and Saturdays was the busiest days, then. Now, it is Monday and Thursday.

Recross-examination.

Questions by Mr. Schmidt:

Q. As a matter of fact, these trucks drove on and unloaded their goods and merchandise on this wharf boat, whether the boat for [fol. 265] which the merchandise was intended, was there, or not, wouldn't they?

A. Oh, yes.

Q. Where did you get your information that there was only a hundred and fifty tons of merchandise on there, when she sank?

A. From the bills of lading, that was about what it was.

Q. Did you compute that, yourself?

A. No, sir.

Q. Do you know what kind or character of cargo that was?

A. In general, I do.

Q. Give the Court an idea of what that was.

A. We had quite a lot of furniture, for one item.

Q. How many chickens were on there?

A. I don't know—some chickens and some hay.

Q. How many bales of hay?

A. I don't know.

Q. How many bags of cement were on there?

[fol. 266] A. I couldn't tell you. There was cement on there, and there was hay on there, and quite a lot of hardware.

Q. How much hardware?

A. I don't know that, but there was some.

Q. The bulk of the cargo would have something to do with the amount that the men could unload, regardless of its weight, would it not?

The Court: I think that is self-evident.

A. Well, a man could hardly carry but one package, no difference how small.

Q. If you don't know what kind of cargo was on her——

A. It was general merchandise.

Q. How are you able to estimate, or compute that it would take twenty-five men fifteen or sixteen hours to unload about thirty-seven and a half tons?

A. I am just making an approximate estimate.

[fol. 267] Q. If it was feathers, it might take a great many more men, would it not?

The Court: Oh, don't let us argue any more, on that kind of questions.

Witness excused.

[fol. 268] JEFF H. WILLIAMS, a witness called on behalf of the Petitioner, being first duly sworn, testified as follows:

Direct examination:

Questions by Mr. Darby:

Q. Please state your name to the Court.
A. Jeff H. Williams.
Q. Where do you live and what is your business?
A. Evansville, Indiana; general agent of the Evansville and Bowling Green Packet Company, and manager of their business of the wharfboat.
Q. Were you engaged in that occupation in the month of May, 1922?
A. Yes, sir.
Q. How long have you been in the steamboat business, generally?
A. About twenty-five years.
Q. Tell the Court the nature of your steamboat experience?
[fol. 269] A. Well, I was clerk several years, and then I was later master, and from that I went to general agent of the Company, with headquarters at Evansville.
Q. In your work as general agent, were you in charge, generally, of the operation of the wharfboat?
A. Yes, of the operation.
Q. Just explain what you mean by operation of the wharfboat?
A. Well, the employing of the necessary clerks in the interchange of traffic, from steamboats to steamboats, and from steamboats to rail lines, and receiving local freight for the outbound steamers.
Q. What portion of the business that passed over the wharfboat in May, 1922, was interstate business?
A. It was all interstate business.
Q. How many boats did the Evansville and Bowling Green Packet Company own, that moored at the wharfboat, from time to time?
A. Two.
Q. What were their names?
[fol. 270] A. Evansville and Hazel Rice.
Q. What other steamboats moored regularly at the wharfboat, from time to time?
A. That was the Bay Queen, the Evansville and Paducah Packet Company's steamer, and at that time we had a Nashville steamer, and one operating from Louisville.
Q. Did you and your clerical assistants handle all the way bills and other shipping documents, covering the shipments to and from all of the steamboats that you have mentioned?
A. Yes, sir.
Q. Were you in Evansville at the time the wharfboat sank, on May 14, 1922?
A. No, sir.
Q. You were in Louisville at that time?
A. Yes sir.

Q. State when you arrived at home, and what you found on arrival home.

A. I arrived at about seven a. m., on Sunday morning, and went to the river and found the wharfboat sunk, and therefore, I took [fol. 271] charge to unload and salvage everything I could, and I didn't succeed until after eight o'clock, in getting about thirty men to work.

Q. What did these men do in the way of salvage work?

A. They went into the water and took the freight—some of it was wet and some of it was dry—very little of it was dry—and piled it up on the levee.

Q. Describe the condition and appearance of the wharfboat when you arrived at the levee at seven a. m., May 14th?

A. It had sunk, and on the outboard side the cargo box was in about seven feet of water, and on the outboard side there must have been about six or eight inches of water upon the main deck, and the cargo box.

Q. What is the nature and construction of the levee where the boat is moored?

A. That is hard surface—paved—bouldered with limestone rock.

Q. Was there that paved condition immediately under the boat, [fol.272] at the place that it settled on the bottom?

A. Yes, sir.

Q. Did you later ascertain the exact amount of cargo on the wharfboat?

A. Yes sir.

Q. What was the amount, in weight?

A. Two hundred and ninety-nine thousand and some odd pounds—the exact figures I have.

Q. How did you ascertain that?

A. That is the weights from the bills of lading, of all the shipments that were on board.

A. And that filled about what fractional portion of the wharfboat?

A. Well, of course, when I saw it you couldn't see very much freight. It would not have been more than a quarter, I am sure.

Q. From your experience as a steamboat man, in the loading and unloading of merchandise, if twenty-five men had been available, before the boat sank, able-bodied men, what length of time, in your opinion, would have been required to have carried the merchandise [fol. 273] and cargo from the wharfboat out on to the river bank?

A. Oh, fourteen or fifteen hours, if they had all worked. I beg your pardon—did I understand the question? Was that after the water was in boat, after it sank?

Q. Before it sank?

A. Yes—it would be about fourteen or fifteen hours.

Q. Did you remain in Evansville during the time the wharfboat was raised?

A. Yes, sir.

Q. When the wharfboat was raised, what, if anything, was found under the wharfboat?

A. It was a log with a root wad to it, and snag.

Q. Describe to the Court the nature and size of that snag.

Q. The location of it was about a few feet below the middle door, towards the lower end—it was eighteen inches in diameter, about ten feet long, and it had a root on it, I should imagine about three feet in diameter. It was totally submerged under the corner of the wharfboot.

[fol. 274] Q. By root wad, do you mean the prongs of the root extending out from the trunk of the tree?

A. Yes.

Q. What effect did that submerged snag have on the bottom of the boat?

The Court: It is prefectly plain—if the boat sank, it broke the bottom.

Q. You may state what, in your opinion, was the cause of the sinking of this wharfboat?

A. Well, that log—the root of the log—when the water went down we could see where the boat was bulged up, right near the door, and after the river got lower it washed the mud away from there and we could see where the bottom had been bulged up—not broken, but splintered up.

Q. Are you familiar with the siphon that they had on the steamer Hazel Rice in May, 1922?

A. I am, in general, with all boats. They usually have——

[fol. 275] The Court: Is there any dispute about that?

The Witness: She had about three on each side.

The Court: Let us not take up any time about things that are not in dispute.

Q. Have you had occasion to learn of pumping facilities on other wharfboats similar to this wharfboat?

A. Yes, sir, I have been around other wharfboats. They generally have one pump. Sometimes they are hand pumps. Some of them have gasoline pumps.

Q. How many pumps were on this wharfboat at the time of the sinking?

The Court: Is there any question about that?

Mr. Darby: I don't think so, your Honor.

The Court: Well, unless there is some dispute about it, there is no [fol. 276] use piling it up. Is there any question about the number of pumps that were on that boat?

Mr. Kahn: There is no question about the number of them.

Mr. Darby: And there is no question but what the siphons were all permanently fixed to the steamer Hazel Rice, except the one that was used there—that is the point I want to show.

Q. What is the fact about the six or seven siphons on the Hazel Rice at that time being removable, or not?

A. They were stationary.

Q. How were they fastened on the boat?
A. In the hold of the boat, to the hull.
Q. How many of them were removable, on the Hazel Rice?
A. I don't think there was but one—that is all they used. The packet boats don't generally have——

[fol. 277] The Court: Well, you have answered the question.

Q. Did you, after the sinking, examine the condition of the bottom planks, at the place that the root wad had bulged up the bottom?
A. I did, later, at Mount City. I did not, at Evansville, because I could not examine it there, from the outside.
Q. What was the condition of the planks?
A. They were bulged up—they were sound.
Q. White oak planks?
A. Yes, they were blue white oak; they were about four inches thick, apparently, but I didn't measure them.

Cross-examination.

Questions by Mr. Kahn:

Q. Where did you discover this hole in the boat,—at Mound City, or Evansville?
A. At Evansville.
[fol. 278] Q. And it was at the side of the boat, or in the bottom?
A. It was on the bottom, about two or three feet from the middle door, on the shore side.
Q. How far from the shore end?
A. About a foot or two from the shore side—it was bulged up. The hole in the bottom of the boat was about one or two feet from the outboard side, where it would show, and still it extended lengthways.
Q. It extended lengthways for a distance of about ten feet?
A. About eight or ten feet—two or three feet in width.
Q. When you say the outboard side, which side is that?
A. This was on the inboard side.
Q. And about a foot or two from the end of the boat, on the inboard side?
A. Yes.
Q. And the wharfboat was about forty-eight feet wide?
A. Yes, and about 243 feet long.
[fol. 279] Q. Your judgment is that it was about one-quarter loaded?
A. It only had about a hundred and fifty tons of freight, and its capacity was considerably more than that.
Q. Now, the wharfboat received a separate wharfage charge, did it, for handling each item of frieght?
A. Well, we received a wharfage charge from all shipments, regardless of where they originated, or their destination. It is in our tariff that the wharfage charge of two and a half cents a hundred,

a fifteen cent minimum, and a drayage charge of twenty-five cents a hundred—that is part of the through freight rate.

Q. And that is in addition to the charge that boats operated by your corporation, or any other corporation, may charge, or receive for carriage?

A. That is in addition to their freight, yes.

Q. That goes to the wharf boat?

A. Yes, sir.

Q. And some of that charge is a flat monthly charge, is it not? [fol. 280] A. Well, they have the liberty of paying the—the local people do.

Q. At that time, in May 1922, when the wharf boat sank, and some time prior to that time, wasn't there an arrangement between your company and local shippers, in Evansville, whereby they would have the use of the wharfboat, as such, at a monthly rate?

A. Yes, sir, it was their privilege to pay that.

Q. And that was in addition to the carriage charge?

A. Yes, sir, they had the privilege of paying that. I might say that the steamboats pay for the privilege, themselves—they pay twenty-five dollars a week to the wharboat, for the privilege of handling in—and outbound stuff.

Q. That is, steamboats other than those owned by your company?

A. No, no—all companies' boats.

Q. Your company's boats pay that to the wharfboats, too?

A. Yes, sir.

Q. And that is also in addition to the wharfboat charge, on each [fol. 281] shipment?

A. Yes, sir.

Q. You said something about the salvage—how much was the salvage—how much freight was salvaged?

A. We have a record of that.

The Court: Oh, about how much?

The Witness: I couldn't tell you just how much was salvaged, because they worked for several days, taking it off the boat, and puting it in the warehouse.

Q. Could you tell us in dollars and cents?

A. I have it here—some have been disposed of.

Q. How much was disposed of, and how much have you on hand?

Mr. Welman: Your Honor, the claims they filed here are net claims.

A. There is $969.49 received from the salvage sold, and the remainder of it—I had someone value it, who had had it in charge, [fol. 282] and he valued it all at a hundred dollars. Therefore, there is about a thousand and seventy dollars salvage.

Q. Now, a considerable portion of this property that was salvaged was ordered back by you, from the shippers—did you tell them to send it back to you, so that you could take care of it?

A. No, sir. There was only one party that kept insisting on me coming to their store and get their goods, and I refused to do it. It was Raphael Brothers, dry goods, and they had a claim of about eight hundred dollars. I refused to go and get it, and they said they were going to sell it for fifty dollars, and I said I thought I could get more out of it, myself, and they sent it to the wharfboat.

Q. Didn't you order it sent back?

A. No, sir, I did not, but I told them they could send it back, and they sent it back, and I sent it up the river, and I got a hundred and five dollars.

Q. You have that money?

[fol. 283] A. Yes. I had some fourteen hundred dollars that I advanced for getting the goods off of the wharfboat—$1447.75. The wharfboat paid the labor for packing the stuff off, and the watching and the transfer of the stuff up to the warehouse, and caring for it, and the rent on the building, and we paid, through you, $60.55 for a laundry bill, that you made us pay—I sent it to the White Swan Laundry, and I thought that would be paid and settled through the court, but I received a letter from you, where you told me I had better pay it, and I paid it.

Q. And that fourteen hundred dollars you are setting up, as I understand it, for taking the same goods which went down on the wharfboat—getting them out of the water and fixing them up.

A. Yes, sir.

Witness excused.

[fol. 284] RICHARD WILLETT, a witness called on behalf of the Petitioner, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Welman:

Q. Please state your name.

A. Richard H. Willett.

Q. Where do you reside?

A. New Albany, Indiana.

Q. What is your occupation?

A. Superintendent of the Indiana Towing Company, of Evansville, Indiana.

Q. Is that a boat company?

A. Yes, sir.

Q. Tell briefly, and fully, your experience with navigation on the river, and what you have done in that connection.

A. I will say that I commenced on the river when I was eighteen years old—in other words, going on forty-nine years ago— and I have practically, most all the time, been connected with the river, [fol. 285] since that time, in the way of navigation, construction of steamboats, water craft and boats of different kinds.

Q. Have you had both to do with the construction and operation of steamboats?

A. Yes, sir, and the repairs.

Q. Did you know the wharfboat that we have been talking about here?

A. Yes, sir.

Q. Did you see it after it was sunk at Evansville, Indiana, on May 14, 1922?

A. Yes, sir.

Q. When did you first see it after that date?

A. Oh, I would say I saw it approximately a week afterwards—I would say—I can't say definitely.

Q. Did you make an inspection and examination of that boat for the purpose of determining what caused it to sink?

A. I was curious to know how it occurred, and I went down there and looked at it, and I got down on the hull of the boat—the [fol. 286] river had fallen away from it, and the inside of the boat—the water was entirely away from it—I got down in the hull of the boat, and looked at it.

Q. What did you find there?

A. I found that the break was on the inside, next to the bank, and I would say about halfway back, the length of the boat—something of that kind, and the trouble seemed to be about, I would say, something like eight or ten feet long, and twenty to twenty-four inches wide. There was a little variation in there. The boards, the bottom planks, were pressed up, and the cross timbers, some of them broken, and that caused the planks to separate in the seams.

Q. What did you find caused that?

A. I couldn't see very good. I could see it was a piece of timber, of some kind—that is, some obstruction of some kind under there, because the boards were not broken sufficiently that you could see it except through the cracks, or the seams, where they were spread apart, but I saw, afterwards, the log, purporting to be the log that [fol. 287] they got out from under the boat, when it was raised. It was a log sunk under there, a root wad—the butt of a tree—some eight or ten feet long, and perhaps eighteen or twenty inches in diameter, with a root wad hung to it, and the roots, some of them, had been broken off, and others, no doubt, had been pressed down in the mud that was under the boat. Some of the mud under the boat was squashed up into the seams, in this broken place.

Q. What was the character of the timber there, where the root wad pressed up?

A. Good—good.

Q. What was the thickness of it?

A. I would say it was approximately three and a half inches, or more, and the width of the boards varied from ten to twelve or fourteen inches—something like that.

Q. Do you know anything about the weight of that wharf boat?

A. No, sir, I don't know that I could answer that, intelligently, [fol. 288] without knowing the amount of lumber used in the con-

struction of the boat. You could tell by the tonnage—that is, by figuring the displacement. I would say, at a conservative estimate,

A. I mean that the wharfboat, itself, would weigh two hundred tons of weight—dead weight.

Q. Explain to the Court what you mean by that.

A. I mean that the wharfboat, itself, would weight two hundred tons.

Q. Have you figured the weight of it by the displacement?

A. No, sir, I haven't made figures on it.

The Court: He stated that he had not, but that was his estimate.

Q. From your experience in the constructing and navigating of boats, if that boat rested upon this root wad, at that point, about midway, and the water receded, would that boat have been of sufficient weight to have pressed this bottom upwards?

[fol. 289] A. Without any cargo?

Q. Yes, or with cargo.

A. Either way, yes, sir, absolutely.

Q. Suppose that had been a brand new boat, built on the same dimensions as that was built, and that was its first day in the water—would that weight have broken a new boat, as it did this boat?

A. Absolutely, it would have done the same thing—Yes, sir.

Cross-examination.

Questions by Mr. Kahn:

Q. This wharfboat had a flat bottom, did it?

A. Yes, sir.

Mr. Welman: Did you see the wharfboat after the time that you have mentioned, or make any further examination of the boat?

The Witness: No, sir, I did not.

[fol. 290] Q. And you were there in Evansville and made an examination—did you notice the angle of the levee, there?

A. Do you mean the grade?

Q. Yes.

A. I have noticed it from time to time, but I couldn't say what it is. I don't know what it is.

Q. This hole was just within a foot of the inboard edge, you said——

A. No, I didn't say that. You misunderstood me. I didn't say how close it was in there. I would say that it was three feet in, any way.

Q. And twenty-four inches away?

A. Yes, sir.

Q. And the dimensions of the log were about as you have stated them before?

A. Yes, sir.

Q. As a practical proposition, is it possible for that log, under those conditions, to float under there, and lodge there?

A. Yes, on account of the washing of the levee.

[fol. 291] Q. The washing of the levee would have nothing to do with the size, if the space wasn't there—it is a question of the space, pure and simple, for the log to get into, isn't it?

A. Yes, sure, but the log would hang in that mud, after it got under there.

Q. But I am talking about getting under there, in the first place.

A. Oh, it would take space, yes, sir.

Q. You, yourself, didn't see that log in there?

A. I saw something under there. I could't see whether it was a log, a piece of timber, or what it was. I saw it under the break.

Q. Have you any other relation with the Evansville and Bowling Green Packet Company, other than doing work for them?

A. No, sir—and I never done any work for them.

Q. Your Company would do the repair work?

A. No, sir.

Q. Did you notice the concrete in the boat, when you examined it?

A. Yes, I noticed some concrete along what we call the knuckle.

[fol. 292] Q. Was it broken, or not?

A. In places.

Q. And that concrete was at the place where the sides join the water?

A. Yes.

Q. And where were the places that were broken?

A. Oh, I couldn't say exactly. They were approximately along where I examined.

Q. How long have you known this wharfboat?

A. Since 1901.

Q. And you never saw it before that time, and you didn't know how old it was before that time?

A. I couldn't say. I might have seen it, but I couldn't say that it was the same wharfboat, but I saw it in 1901. It was brought from Hopefield, Arkansas, and taken to Madison, and given a thorough overhauling.

The Court: I think we have gone over that often enough.

[fol. 293] Mr. Weiman: You were asked about the space between the bottom of the boat and the slope of the levee—now, if a log had lodged there, but the river had fallen, and when the river would fall, the boat would come down to the log, would it not?

The Witness: Yes, sir.

The Court: Do you think you ought to have a witness swear to that? Do you think I don't know enough to know that?

Witness excused.

EDGAR J. LILLY, a witness called on behalf of the Petitioner, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Darby:

Q. State your name to the Court.

[fol. 294] A. Ed. J. Lilly.

Q. Where do you live, and what is your occupation?

A. New Orleans, Louisiana, with George S. Causewell Company, as marine surveyor, and insurance inspector.

Q. How long have you been engaged in marine inspection work?

A. Twelve years.

Q. Does that represent the length of your experience in general river boat business?

A. No, sir. I am a ship carpenter, by trade, and work around dry docks, repairing boats.

Q. For what period of time were you a ship carpenter?

A. From sixteen years of age up until 1911. I am forty-eight years old.

Q. Did you have occasion to come to Evansville for the George S. Causewell Company, after the sinking of the Evansville wharfboat?

A. Yes, sir.

Q. What, if anything, did you have to do with the raising of the wharfboat?

[fol. 295] A. I was working with the Evansville and Bowling Green Packet Company—I superintended the raising of it.

Q. When, if at all, did you ascertain the cause of the sinking of the wharfboat?

A. About a week or ten days after I was there.

Q. Just tell the Court what you found, in your effort to ascertain the cause of the sinking?

A. I arrived there on Monday, after the 14th of May, on the 16th of May, and the river was up, and I waited around for about a week, and the river fell about seven or eight feet, so I got some men and went on the inside to wash the mud out, on the inside, and I thought the river was gone down far enough to wash all the mud out, and the river come back, and we put in some extra pumps, and as the river come up we kept it pumped out, and tried to float it.

Q. What, in the way of a snag, or log, did you find underneath the wharfboat?

A. About the center of the wharfboat, about two feet from the in-

[fol. 296] shore side, I found about six floor timbers slivered up, and busted up on the bottom, and two or three planks shoved up, so that you could see these roots through the cracks and seams in the planking.

Q. And was the log, with the roots, removed under your supervision?

A. Yes, after we floated her, we pulled it out on the bank, and it was the root of a tree, with a trunk about eight or ten feet long,

and about eighteen to twenty inches in diameter, and the roots were sticking up about, I imagine, about three feet across the *root*.

Q. Is that the same snag, or log, that has been referred to by Mr. Willett?

A. Yes, sir. I showed it to him. And, also, while the water was down I built a bulkhead around this break, so that when the water came up we wouldn't have to bother with that. It shut it off, so that we could pump it out.

Q. At those broken places, where the floor timbers were bulged [fol. 297] up, what was the condition of the planks?

A. They were in good condition, oak planks, about sixteen or eighteen inches wide, and the floor timbers were sound, except where they were shivered up, and one or two of them, at the highest places, were broken off, and as they went along they gradually slivered off.

Q. What, in your opinion, was the cause of the sinking of the wharfboat?

A. The river falling, and this submerged log becoming caught in this mud, and the wharfboat settling on it.

Q. From the condition that you found there, considering the weight of the wharfboat, and the nature of the submerged snag, or log, what result, in your opinion, would have followed, if the hull of the wharfboat had been absolutely new?

A. The same result.

Q. When you examined the hull of the wharfboat, did you find that some concreting had been done on the inside?

A. Yes.

[fol. 298] Q. State whether or not that was a proper thing to do?

A. Yes, sir, it is used on the river, and more so on ocean vessels. Ocean vessels are concreted on the inside, to take care of seepage, where the rivets might leak, and things of that kind.

Q. In your work as a marine inspector, have you had occasion to inspect other wharfboats on the Ohio and Mississippi rivers?

A. Yes.

Q. Have you observed inside concrete repair work upon other wharfboats?

A. Yes. Wharfboats, and sometimes packet boats, and other vessels.

Q. What are the pumping facilities on the Evansville wharfboat, as compared with wharfboats generally?

A. About the same and a little better. They had something that they could turn on immediately, at all times.

Q. Had you, preceding the sinking of the boat, made an inspection of this wharfboat?

A. Yes, in 1921,—once a year I made an inspection for the Company.

[fol. 299] Q. What did your inspection develop in 1921?

A. I found it in good, sound, condition, and safe for insurance.

Cross-examination.

Questions by Mr. Cutler:

Q. Do you represent the Company that carried the insurance on the wharfboat?

A. Yes.

Q. You say that you make inspections of boats about once a year?

A. Yes.

Q. When did you inspect this boat?

A. Along in the summer of 1921.

Q. Was that before or after they had done the caulking with concrete?

A. They had some concrete here and there.

Q. Just tell the Court how you made the inspection?

A. I would go down and take a flashlight and go through, all around, in each compartment. She had a bulkhead in her, and I [fol. 300] would go from one end to the other and sound the timbers and bulkheads and beams and see if there were any open seams, and if I saw any, I would report it to the Company and have them caulked.

Q. Did you find any open seams at that time?

A. No, sir. They had one above the light water line, and it was caulked.

Q. They had done that before you came?

A. Yes, some time during the summer.

Q. Just what did you do in inspecting this boat—I mean, the bottom of the boat?

A. I just would go along and look from one timber to another.

Q. Look along as you walked?

A. Yes, sir, and if I saw anything that looked bad, I took a chisel or screw-driver and sounded it.

Q. You wouldn't take any tool to it, unless you noticed something as you went along?

A. No, sir.

Q. When had you inspected this boat before that time?

A. Along in May, or June, 1921.

Q. I mean before that?

[fol. 301] A. In 1920.

Q. In 1921 how much time did you put in, in making the inspection?

A. I guess about three hours.

Q. What examination did you make of the concrete around the sides?

A. Just to see whether it was busted, or leaked, or anything—I didn't see any seepage around.

Q. You didn't notice the concrete broken, at that time?

A. No, sir.

Q. When you made the inspection of it, it was sunk—what about the concrete?

A. Well, the log had shoved the timbers up, and it was broke.

Q. State whether or not it was broken in any other places?
A. No, sir.
Q. You went all around, did you?
A. Yes, sir.
Q. And you say that in sea-going vessels they use concrete?
[fol. 302] A. Yes, sir.
Q. For caulking, or repairing?
A. Yes, sir.
Q. That is only a temporary measure, isn't it?
A. No, sir, that is permanent—in every ship they put about six or eight inches of concrete in the bottom.
Q. They build concrete ships, don't they?
A. Yes, sir.
Q. But they haven't proven very successful, have they?
A. No, sir.
Q. Now, when you repair with concrete, they build a form up, do they, and then fill in between the form and the edge of the vessel, with concrete?
A. Sometimes, and other times they use the timbers of the boat as the form.
Q. In this boat they built up forms, didn't they?
A. They put a board along.
Q. And then filled in with concrete?
A. Yes, sir.
Q. Does the concrete adhere to the wood on the sides?
A. Yes, sir, it sticks to it. It doesn't leak, and it takes an awful [fol. 303] lot of time and hard work to take it out, when you have to take it out.
Q. Here was a boat two hundred and forty feet long—now, concreting along the side, eight inches thick—that makes it stiff, rigid and firm, doesn't it?
A. Yes, sir.
Q. You take a vessel two hundred and forty feet long, and forty-eight feet wide, and the waves have a tendency to create a motion in that boat, don't they?
A. Not a boat like that. She was too well built, and she had hog chains to take care of that, and she had what is called kelson bulkheads to take care and strengthen her.
Q. Well, it does have that tendency?
A. Yes, in some boats.
Q. You made a thorough inspection of this boat?
A. Yes, sir.
Q. Did this boat have any I-beams, or any special reenforcement at these doorways, where these heavy trucks drove on?
[fol. 304] A. No, sir.
Q. Now, a loaded truck, going off of the dock on to this wharf-boat—state whether or not that doesn't cause a pretty severe strain on that boat—on the side of the boat?
A. Yes, slightly. They have an apron, you see, that takes some of it off.
Q. But it does come down on the boat?

A. Yes. There is an apron to it.

Q. If a boat two hundred and forty feet long, has the heaviest part of the freight in the middle of the boat, state whether or not that has a tendency to cause a strain on that boat?

A. Yes, sir.

Q. Or if it is loaded at one end, whether or not that has a tendency to cause a strain on the boat?

A. Yes, sir.

Q. Now, you take concrete eight inches thick, and a foot and a half, or two feet high, and two hundred and forty feet long—state whether there isn't a tendency, there, either by loading heavily at [fol. 305] one point—isn't it the tendency of the waves, during a windstorm, to cause a heavy strain on that boat?

A. I guess it would.

Q. Wouldn't that have a tendency to break, or crack the concrete, which is rigid—there isn't any give to concrete, is there?

A. Well, you see, it is only in about an eighteen inch space, in there, and on a boat of that class it wouldn't be just like one solid piece of concrete. The frame gives it a brace to take care of the vibration.

Q. Does that frame extend all around the boat?

A. Yes, the side frame on the boat, and the concrete was in between the frames.

Q. But wouldn't it have that same tendency, to break the concrete away from these frames?

A. Yes.

Q. Are you familiar with the regulation of steamboats on the inland rivers, as to the inspection of hulls?

[fol. 306] Mr. Darby: We object to that as not cross examination.

The Court: He may answer.

A. Yes, sir, to a certain extent.

Q. Don't you know, now, as a matter of fact, that under the Government regulations covering steamboats on inland waters, that it is not permissible to use concrete for caulking, or repairing boats, except as a temporary expedient?

A. Well, they might call it that, but I can tell you that a big excursion boat out of Pittsburgh was concreted, and——

Q. I didn't ask you that. Answer the question yes or no.

A. Yes, sir.

Q. You know that that is the regulation?

A. Yes, sir.

Q. This Evansville wharfboat was longer and wider than any steamboat plying the river at Evansville, during 1922, was it not?

A. Do you mean on the Ohio River?

Q. I mean passing Evansville, or out of that port.

[fol. 307] A. There is a steamboat line that has a boat two hundred and seventy-five feet long, and she goes up and down the Ohio?

Q. That is an excursion boat, isn't it?

A. Yes, a packet boat.

Q. But any boats in the general trade, going in or out of the port

at Evansville, during the year 1922—were there any as large, in length and width, as the Evansville wharfboat?
A. Not that I know of.
Q. When you made this inspection the year before the boat sank, did you make an inspection of the pumps?
A. Yes, I did.
Q. Just what examination did you make at that time?
A. Well, just to see where they were located, and the day man would go around with me and show me the electric pump and the two gasoline pumps.
Q. You just checked up, to see that they had the pumps there?
A. Yes, sir.
Q. Can you tell whether or not the Evansville wharfboat, con-[fol. 308] sidering her size as compared to steamboats, had sufficient provision in the way of pumps, to take care of it in a case of emergency?
A. It would take care of any ordinary seepage, or small leak.
Q. Isn't it a fact that all steamboats—even smaller boats than this wharfboat—are required to have a certain number of pumps, of a certain size, under the Government regulations?
A. No, sir.
Q. What are the regulations on that?
A. The owners put them in, but they don't specify any size.
Q. Do you mean that the Government doesn't provide anything as to size and number of pumps?
A. No, sir.
Q. Are you sure about that?
A. I am pretty sure. I have been around the docks and boats all my life, and I never seen them.
Q. You never were in the Government service, were you?
A. No, sir.
[fol. 309] Q. So that you don't know about that?
A. No, I am not sure about it.

Redirect examination.

Questions by Mr. Darby:

Q. You were asked, on cross examination, about Government regulations prohibiting the use of concrete, in temporary caulking of steamboats?
The Court: Except in a temporary way, was the question.
Q. Yes, except in temporary caulking?
A. Yes.
Q. Isn't it a fact that that is a matter that is left wholly to the discretion of the steamboat inspector?
A. Yes.
Q. And there is no absolute prohibition on that subject?
A. No, sir.
[fol. 310] Q. Now, in the construction of the Evansville Wharfboat, you have spoken of bulkheads—what is the purpose of the bulkhead?

A. To give it strength to carry a load, or any unnecessary strain that might come in any particular place.

Q. And as an experienced man in boat construction work, is as much required to hold a stationary boat rigid, as a steamboat, which navigates regularly?

A. No, sir.

Q. Have you described the bulkheads in this boat?

A. Yes, I just said there were five, running fore and aft, from the floor timber under the deck beams.

Q. And they are laid edge to edge, the full length of the boat?

A. Yes, and bolted through.

Q. To make the wharfboat rigid, there are also hog chains and pickup chains?

A. Yes, three sets of four and a half hog chains.

[fol. 311] Recross-examination.

Questions by Mr. Cutler:

Q. These bulkheads were not watertight compartments, were they?

A. No, sir, they were for strength.

Q. They were for the purpose of strengthening the boat and the floor of the decks?

A. Yes, sir.

Witness excused.

[fol. 312] George H. Wilson, a witness called on behalf of the Petitioner, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Welman:

Q. State your name.

A. George H. Wilson.

Q. Where do you live.

A. Louisville, Kentucky.

Q. What is your age.

A. Fifty-seven.

Q. Tell the Court your river experience.

A. Forty years.

Q. In what capacity.

A. I ran on the boats as clerk, and afterwards went as assistant manager for The Louisville and Evansville Packet Company, at Louisville, and was manager of that for a number of years, and I have built and owned boats, and I am now the manager of the Wilson Transportation Company; and, also, I have been with the insurance people as their marine inspector.

[fol. 313] Q. Do you know the dimensions of the wharf boat in question, that you have heard about, here, from the witnesses.

A. Yes sir.

Q. If that would draw eighteen inches, without any load in it, any cargo in it, what would the boat weigh.

A. Five hundred and fifty tons.

Q. If it would draw one half, how much would it weigh.

A. Three hundred and sixty-seven tons.

Q. What would be the full carrying capacity of that wharf boat.

A. On a draught of five feet of water she would carry fourteen hundred and sixty-nine tons.

Q. Have you a personal acquaintance with that boat.

A. Yes sir.

Q. What would you say as to its manner of construction, with regard to its being proper.

A. It is constructed unusually heavy, and the boat was built in 1884, at Jeffersonville for the Cotton Belt and Iron Mountain Road, and was taken down to Hopefield, Arkansas.

[fol. 314] Q. When was it later rebuilt.

A. It was later rebuilt in 1901. I did that myself.

Q. What did you do with that boat in 1901.

A. I bought the boat in 1901 and towed her to Madison, Indiana, and cut her down three feet—she was nine feet in depth in the hold, at that time, and I spent a little over ten thousand dollars on her, in reconstructing her, and towed her to Louisville, and used her as a wharf boat for the Evansville and Louisville Packet Company, of which I was then superintendent.

Q. You have heard from the witnesses the manner in which this boat rested on a log, at the Evansville wharf, and that that log was upon a solid foundation, and that the water receded some five-tenths of a foot—if that boat had been new at that time, and of the same dimensions and weight as the wharf boat in question, would the same result have occurred, in your opinion.

A. Yes. It would have punched a hole through the bottom, wherever she was resting.

Q. Did you see this wharf boat after she sank at Evansville, in [fol. 315] May, 1922.

A. I did not.

Q. When did you see it last before that time.

A. In 1920 I made an inspection of it for the insurance people. That was my last inspection. Previous to that time I had inspected her every year, back as far as 1910. In 1910 I saw her on the ways, at Madison, being again rebuilt, and inspected her there.

Q. Are you acquainted with wharf boats, generally, along the Ohio River?

A. Yes sir.

Q. And on the Mississippi River.

A. Yes sir.

Q. What would you say as to the number of pumps that were on this boat at Evansville, at that time, whether they were sufficient for the ordinary purpose of wharf boats.

A. They were sufficient for all ordinary purposes, on wharf boats.

Q. After the hole was broken in the bottom, as has been here testified to, would any number of pumps had kept the water out, or [fol. 316] kept the boat from sinking.

A. A ten inch centrifugal pump would not have done it.

Q. What about the practice, or custom, of concreting boats of this nature.

A. It is usually to stop the leaks, or seepages, if any, in the, what is known as the rabbet seam, or bottom seam—where there is any seepage there, that will stop it, and in steam boats, where they are against the bank, their head wears off gradually to the knuckle, and there is concrete put in there behind the bilge keelson, because you can't get in there to fix it any other way, and they use concrete to do that, and in the head of the boat there is concrete, in plenty of the boats, and kept there continually.

Q. Is there any difference in the bottom of a steam boat, or one that is in motion, and a wharf boat, like the one in question, that lies quietly at the wharf? Is there any difference in the effects on the bottom of the boats and the hull.

A. Yes. A steam boat, in running, has a weaving snakelike mo- [fol. 317] tion, and a wharf boat lying at the bank, lays perfectly steady, and it is not affected that way.

Q. Is there anywhere on the bottom of the steam boat——

The Court: Why go into that? There is no steam boat in this case.

Cross-examination.

Questions by Mr. Schmidt:

Q. Have you calculated what size of a log it would require to punch a hole in the bottom of the hull of this size boat, where the river receded one inch.

A. It would raise the plank—it would buckle them—that is, make them ride each other, in the bottom, where it was resting—just depending on the amount of weight that was resting upon that log.

Q. Now, where you have an incline, sloping at an angle of, say forty-five degrees, with the hull at that same angle, making an angle [fol. 318] of forty-five degrees, would the slope of the bank, where the river recedes, and the hull is buoyant, and floating, would the pressure of that hull be downward or outward.

A. It would be downward.

Q. Straight down?

A. Straight down.

Q. Now, what would be the pressure of a buoyant body the size of this hull, upon a log, say one inch in diameter?

A. A log one inch in diameter? Do you mean a twig?

Q. Yes.

A. It would be imperceptible; it would not affect it at all.

Q. You didn't see this particular log that they have been testifying about?

The Court: What are we getting at? I don't see the point to that. I don't think there is any point to those questions. Let us get to something that amounts to something.

[fol. 319] Q. If this hull was on the river bank, where the river was raising and falling, then, as the river fell, would good seamanship require that the mooring chains be loosened, and the spars pushed out, or shoved out?

A. She would have to be shoved out, to be cared for in the proper way.

Q. And the fact that she settled on an obstruction which punched a hole through the bottom, would indicate either that her mooring chains were not loosened and the spars not pushed out, or else that she was suddenly overloaded, would it not?

A. No sir.

Q. What would it indicate?

A. It would indicate that nobody knew that that submerged obstruction was there, and that the boat was shoved out, and if there was three feet of water showed all along, on the inside, if there was a log under there, that was thirty-four inches in diameter, and not be found, that would not indicate that the chains were not loosened. [fol. 320] The chains would have to be loosened, for the boat to be sparred out, so that so much water could be under the boat.

Q. When the river is falling, good seamanship would require, would it not, that these mooring chains would be in a loose, or slant condition, so that the vessel would gradually go out of its own accord, would it not.

A. No sir. The spars are set, and the boat is sparred out the distance required, and the chains are let slack, just to that point, and they are still tight. If they were slack, your boat would float down the river and change her position.

Q. Then, if the river is falling at the rate of five-tenths of a foot per day, at what time, if any, would you say that those mooring chains would have to be slackened.

A. It depends on when you sparred her out. If you sparred her out in the morning, to take care of it; you notice how fast the river is falling, and you can take care of that.

Q. Is that done only in the morning.

A. Oh, no, it is done whenever it is necessary.

[fol. 321] Q. By whom, as a rule.

A. It is done by the man in charge of the wharf boat.

Q. I hand you "Exhibit No. 2," which purports to show mooring lines and spars, and I will ask you to state to the Court which of those mooring lines should have been loosened if the river was falling at the rate of half a foot per day.

A. You would loosen them all. You have your head line here (indicating).

Q. That is, the up and down stream lines.

A. Yes sir, and you get your breast chain their (indicating)—that is to let it go out. And that is to keep her from going down the river. You have got to keep this chain here, (indicating) taut, so

as to hold her from going out. These spars are not set in this picture. They are resting on the back of the boat. That is evidently on a rising river, there—when the picture was taken—or the river was stationary. If the river was falling the spars would be set and heeled into the bank, or into the wharf. This chain would be taut, and [fol. 322] the breast chain would be taut, on that, to hold her steady.

Q. Now, if the river was falling, and those mooring lines were slackened and the spars were not released, then the boat would be compelled to settle as the river fell, immediately where she was held by these lines and spars, wouldn't she.

A. Yes sir, they would hold her there. She would stay in the same place.

Q. But if those lines are slackened carefully and properly, and the spars are released carefully and properly, in the same proportion as the river recedes, or falls, then the vessel, or hull would go out from the bank and would not be apt to settle by reason of going into deeper water, would it not.

A. That is all right.

Q. Answer that question, yes or no.

A. Yes.

Q. Well, isn't it a fact that in view of a falling river and this hull having settled upon a stationary object, the weather conditions being normal, as to wind and waves, that the mooring lines and spars were not properly released in proportion to the recession of [fol. 323] the river.

A. No sir.

Q. No?

A. No, because if your boat had already caught on an obstruction you could slack all the lines you pleased, and she would hang right there on the obstruction.

Q. But suppose she had not been caught—then it would indicate that the spars and lines were not properly released, would it not.

A. Repeat that, please.

Q. Assuming that the hull had not been in contact with a submerged obstruction, and the river had receded, and then subsequently the hull had settled upon the submerged obstruction, it would indicate, would it not, that the mooring lines and spars, or other fastenings had not been released in the proportion that the river receded.

A. No—I may be dumb—I don't quite get your point.

The Court: I think you have given the right answer. No is the [fol. 324] right answer. I think it is perfectly plain. The issue at this particular point is this: If the river receded, and in that way lowered the barge, and the barge rested upon an unknown substance down there, which bulged a hole in it—the question is, did that happen? Or, was this barge so leaky that it sank anyhow? That is the issue, isn't it?

Mr. Kahn: Yes, your Honor, but there is one pertinent question——

The Court: Well, I say, that is the issue. You claim that this barge was leaky and didn't have pumps enough on it, and there

wasn't anything right about it, and it sank because of the fact that it wasn't made right and wasn't kept in order, and wasn't in good condition at the time. That is your contention.

Mr. Kahn: And that it wasn't properly managed, and it was on account of their negligence and carelessness that the barge sank. It was negligence that was then within their knowledge, and because of that, the barge sank.

The Court: Of course they knew the barge sank. Is that what you mean?

[fol. 325] Mr. Kahn: No, the contributing cause——

The Court: You mean that they should have known that it was in that condition?

Mr. Kahn: Yes, your Honor.

The Court: So that the issue here is. What caused this barge to sink? Did it sink because it got leaky, and water seeped in and it went down? Or did it leak because—Of course it settled down on this log and bulged up the bottom. I suppose there is no doubt about that. Now, the question, then, is, What caused this boat to go down? If it was the lowering of the water, it was one thing. If it was because it leaked anyhow, and the lowering of the water had nothing to do with it, that is another thing. That is the question we are getting at now.

Mr Kahn: Or, if it was overloaded.

The Court: So, therefore, what difference does it make whether it might have got off the log if they had let it out a little further? Nobody knew the log was there.

Mr. Schmidt: If they had seams above the lightwater line, and it was suddenly overloaded——

[fol. 326] The Court: There is no evidence that it was heavily overloaded.

Mr. Schmidt: Well, you haven't heard our case yet.

The Court: But what has this cross-examination got to do with that issue? Nothing in the world.

Questions by Mr. Kahn:

Q. Would the falling river have permitted this boat to have settled on this log, without the lowering of the chains or the loosening of the chains, spars and moorings.

A. Yes sir.

Q. Without the slackening of them.

A. Yes sir, it would have lodged on that log, and the river falling would have punched a hole right through the bottom of the boat.

The Court: Why, of course. I know that, myself, and I was born and brought up here in Boone County. The question is, What caused the boat to go down? If it was the falling of the river, that [fol. 327] is one thing. If it was due to the leaky condition of the barge, that is another thing. But if the lowering of that barge caused the bulging up of the floor—there don't seem to be any question about that.

The Witness: It was the falling of the river.

The Court: Well, that is your view of it. I am not deciding that, now. I am just making these remarks to show that this cross-examination is very wide of the mark.

Witness excused.

DAN O'SULLIVAN, a witness called on behalf of the Petitioner, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Darby:

Q. Please state your name to the Court.

A. Dan O'Sullivan.

Q. Where do you live, and what is your occupation.

A. I live in Mound City, Illinois, and I am superintendent of the [fol. 328] Howard Shipyards and Dock Company, at Mound City.

Q. As to your experience, tell the Court what length of experience and the nature of your experience in steamboat and barge work.

A. I have been superintendent in the Ways Company for the last twenty-two years, and I have been working in the business for forty years.

Q. You have had forty years experience in boat work.

A. Yes sir.

Q. Now, when, if at all, was the Evansville wharf boat brought to the Mound City Ways, for repairs.

A. It was brought there, I think, the twenty-seventh day of June, 1922.

Q. Who supervised the pulling out of the wharf boat upon the ways.

A. I did.

Q. Just tell the Court, upon an examination by you, of the hull of that wharf boat, what you found.

A. I found a good many things, and I don't know just what you want me to answer.

Q. If there was, about midships, near the knuckles, or sides of the [fol. 329] hull, some broken bottom planks, tell the Court just what the condition was.

A. There was a break in the bottom. I should judge it was a little closer to the aft end than to the forward end—a little below midships—and it was in from the edge of the boat, probably two feet. But the planks were broke all the way out to the edge.

Q. A bulkhead had been built around that broken place, to enable the boat to be floated to the ways, hadn't there.

A. Yes sir, a bulkhead had been built inside, from the wing bulkhead out to the side of the boat.

Q. Tell the Court what kind of planks were in the bottom of this wharf boat.

A. It was white oak.

Q. What was the thickness of the planks.

A. I judge in the neighborhood of three and a half inches—it was originally, I think, four inch plank.

Q. What was the condition of these three and a half inch white oak planks, at and around the place where the bulged up hole was found.

A. They was in fair condition for the edge of the boat. They [fol. 330] was sound.

Q. Was this a smooth b*or*ken place, or splintered.

A. It was just shoved up. It was splintered but there wasn't any hole in the boat, I don't think—the seams were open.

Q. Except for this broken bulged up place in the bottom of this wharf boat, how long, in your opinion, would the bottom of the wharf boat have been safe and sea-worthy.

A. In my opinion it would have been in good shape for a couple of years more.

Q. Did you renew the broken planks.

A. Yes sir.

Q. When the boat was on the ways you also did other work, so as to make the boat safe and sound, and sea-worthy for a good many more than two years, didn't you.

A. Yes sir.

Q. Now, are you acquainted with the maintenance, generally, of wharf boats along the Ohio and Mississippi Rivers.

A. Acquainted with what?

Q. Are you acquainted with the wharf boats, generally, along [fol. 331] the Ohio and Mississippi Rivers.

A. I don't know as I can say generally, but I am acquainted with them some. They come to us for repairs.

Q. You have built wharf boats, have you.

A. I have repaired them.

Q. On the ways.

A. Yes sir.

Q. Are you acquainted with the length of period which good and prudent care and seamanship requires, in taking them out of the river for overhauling, from time to time.

A. I wouldn't say that I was acquainted with it generally, but what I do know, I am acquainted with a few of them.

Q. How often, in your opinion, should a wharf boat, such as the Evansville wharf boat, be taken out of the water and placed on the ways for repairs.

The Court: I suppose his answer to that would be as often as it needed it. What do you say, if you can fix the number of years?

[fol. 332] A. As a general thing they repair them about every twelve to fifteen years—what I have known.

Q. Now, from your examination of this broken and bulged up place, in the botton of the wharf boat, and your information regarding the submerged snag, or log, I will ask you whether or not the same result would have followed if the wharf boat had been a new boat.

A. I think so.

Q. Is it, or is it not, good prudence to use concrete for temporary caulking, in a wharf boat.

A. That is all they could use, according to my estimation under those conditions.

Q. Did you observe the concreting that had been done in the hull of this wharf boat.

A. Yes sir.

Q. Was that concreting that was done, proper.

A. Yes sir, it was done in good shape.

Q. You have heard the witnesses here, detail and describe the size of the submerged snag, or log, upon which this wharf boat rested at Evansville—upon that information, assuming it to be true, and from your examination of the botton of this wharf boat, what, in your [fol. 333] opinion, was the cause of the sinking of the boat.

Mr. Kahn: We object to that.

The Court: I think I could answer that myself. I really don't think I need any expert evidence on that.

Cross-examination.

Questions by Mr. Cutler:

Q. I believe you said that the concreting was a proper method for temporary repairs—is that correct.

A. Yes sir.

Q. But you don't consider it the proper practice for permanent repairs to a boat, do you.

A. Oh no.

Q. The concrete is used temporarily, until you have an opportunity to get the boat on the ways to make the permanent repairs—is that correct.

A. It is used longer than that, sometimes.

Q. But, as a general rule, it is considered a temporary repair—is that correct.

[fol. 334] A. I don't know what you mean by general rule.

Q. I mean under the general practice—with reference to the management of boats on the river.

A. We are talking, here, now, of a wharf boat. We are not talking about steamboats.

Q. Take it in wharf boats.

A. As a general practice that is what they do.

Q. They repair with concrete until they can get them to the ways.

A. No, they repair them with concrete until they have to go to the ways.

Q. When you put them on the ways, do they ever repair them on the ways with concrete.

A. No.

The court: Oh no—there is no doubt about that.

Q. I believe you said, upon direct examination, that when the boat was put on the ways, these planks in the bottom were sprung up—not broken.

[fol. 335] A. Didn't I say pushed up?

Q. I thought you said they were sprung up.

A. I said pushed up.

Q. But not broken—is that correct.

A. I said no hole.

Q. No hole.

A. That is what I said.

Q. In other words, by pressure, springing the boards up, it caused the seams to open.

A. The plank was broken, but there wasn't a hole.

Q. They were cracked, splintered and broken, but there wasn't a hole.

A. That is the way it was.

The Court: That seems to have been the testimony, without contradiction.

Q Besides repairing these planks that were sprung, or pushed up, you made some other repairs on the ways, there—what did that consist of.

A. It consisted of repairing the boat and putting it in good shape.

[fol. 336] Q. Were there any dry seams above the lightwater line.

A. Yes, where the dry seams was, we put in planks.

Q. What do you mean by dry seams above the lightwater line.

The Court: I know that.

A. We put new planks in above the lightwater line.

Q. Now, was that all around the boat that you did that.

A. Yes sir.

Q. You felt that it was necessary to do that, to put her in good condition.

A. It is necessary, where you put a wharf boat, or any other boat on the ways, to repair it and put it in good condition. It makes no difference whether it needs it right then, but it is prudent to repair it then. It wouldn't do to take the boat to the ways every year. It costs a good deal to tow it there and back.

Q. What about boards on the bottom of the boat—did you replace those.

[fol. 337] A. We replaced some few in the bottom of the boat that were a little bad.

Q. You don't know, of course, whether this sinking was caused because there was a log under there or whether she began to sink from the first, and sank on the log, do you.

A. No, but I know that this break in the bottom of the boat was the cause of the boat sinking, because there was no place else there that would make it sink. There was no other place in the side, or the bottom of the boat, that would make it sink. That was the only place where the water could get in.

Q. That is, the water that came into the dry seams could have been taken in by the pumps—is that correct.

A. Yes, if there was any came in the dry seams—I don't know that there was any dry seams in her.

Witness excused.

[fol. 338] S. C. Hornbrook, a witness called on behalf of the Petitioner, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Darby:

Q. Please state your name.

A. S. C. Hornbrook.

Q. Where do you live, and what is your occupation.

A. I live at Evansville, Indiana, and I am manager of the Evansville Ways Company.

Q. Tell the Court your experience in the boat business.

A. Well, I operated boats for about twenty-four or twenty-five years. The last six years I have been building and repairing boats and barges.

Q. Do you have a ways at Evansville.

A. Yes sir.

Q. Your work is confined to small barges, chiefly.

A. Yes, and boats—repairing and building, too.

Q. Did you have occasion to examine the Evansville wharf boat soon after the sinking, in May, 1922.

[fol. 339] No sir.

Q. How soon after the sinking did you examine it.

A. I didn't examine the wharf boat, at all.

Q. You just observed it from Water Street as you pass back and forth.

A. Yes, and I was down on it, but I didn't go in the hold or anything like that. I watched the operation of raising it.

Q. Did you see the log, or snag that was taken out from under it.

A. No sir.

Q. Did you see the broken place, or bulged up place, that was made in the bottom.

A. No sir.

Q. You have heard the circumstances detailed—the description of the submerged log, or snag, and you are acquainted with the size of the wharf boat,—what, in your opinion, was the cause of the sinking.

Mr. Kahn: We object to that, if the Court please.

[fol. 340] The Court: Oh, let him answer, but I really believe I know, myself.

A. It looked like it had settled on something. I observed it from the top of the hill.

U. S. Department of Agriculture.
WEATHER BUREAU.

CHARLES F. MARVIN, Chief.

MONTHLY METEOROLOGICAL SUMMARY
(and Comparative Data)

EVANSVILLE, INDIANA. FOR MAY, 1922.

Date.	Temp. Highest.	Temp. Lowest.	Temp. Mean.	Precipitation. (Inches.)	Character of Day.	P'ct pos. sunshine.	River Stage. (Feet).
1	76	53	64	.00	p. cloudy	61	23. 0
2	7	60	65	1.06	cloudy	1	20. 6
3	72	61	66	.06	cloudy	25	19. 0
4	78	59	68	.14	cloudy	37	17. 7
5	78	58	68	.00	clear	73	17. 5
6	76	60	68	.27	p. cloudy	51	17. 6
7	78	61	70	.00	clear	91	17. 8
8	82	57	70	.00	p. cloudy.	69	17. 5
9	85	69	77	.00	p. cloudy	51	17. 0
10	88	68	78	.00	p. cloudy.	84	18. 0
11	87	71	79	.00	p. cloudy.	79	19. 9
12	83	67	75	T.	p. cloudy	66	20. 7
13	78	60	69	.00	clear	100	20. 3
14	73	59	66	T.	p. cloudy	63	19. 8
15	77	55	66	.00	p. cloudy.	82	18. 9
16	79	59	69	.00	p. cloudy	67	17. 8
17	73	58	66	.01	p. cloudy.	33	17 1
18	69	57	63	.41	cloudy	31	16. 7
19	69	54	62	.00	p. cloudy.	92	16. 3
20	78	55	66	.00	p. cloudy.	99	15. 7
21	81	59	70	.00	clear.	94	14. 9
22	84	63	74	.04	p. cloudy	70	13. 8
23	83	63	73	.00	cloudy	62	13. 0
24	86	67	76	T.	p. cloudy.	57	12. 5
25	84	65	74	.46	p. cloudy	34	13. 1
26	86	65	76	.24	p. cloudy	66	15. 2
27	82	64	73	.00	p. cloudy	57	17. 2
28	81	57	69	.00	clear.	83	18. 5
29	84	60	72	.00	clear	99	18. 4
30	84	63	74	.00	clear	97	17. 4
31	88	63	76	.00	p. cloudy.	84	16. 6

This Month since 1897. Year.	Mean Temp.	Total Precipitation.
1897	62	2. 89
1898	68	4. 61
1899	69	5. 40
1900	68	5. 59
1901	65	1. 00
1902	71	1. 36
1903	69	2. 82
1904	66	2. 01
1905	69	4. 17
1906	67	1. 07
1907	61	5. 59
1908	67	6. 51
1909	64	2. 47
1910	62	2. 63
1911	72	1. 80
1912	68	3. 84
1913	68	0. 59
1914	68	1. 03
1915	65	7. 96
1916	69	3. 72
1917	60	3. 68
1918	72	5. 75
1919	64	4. 74
1920	66	5. 18
1921	68	1. 56
1922	70	2. 69

Mean highest temperature ....79. 7°
Mean lowest temperature .....61. 0°
Mean temperature for month. 70. 4°

WEATHER.

Number of clear days..... 7
Number of partly cloudy days.. 19
Number of cloudy days..... 5
Number of days with .01 or more precipitation..... 9
Mean mo. rel. humidity.... 65 p.ct.

SUNSHINE.

Number hrs. actual sunshine 294. 4
Number hrs. possible..... 441. 4
Percentage of possible..... 67

SUMMARY.

BAROMETER.

Mean..... 29. 96 in.
Highest 30.32 in., on the 1st.
Lowest 29. 47 in., on the 18th.

TEMPERATURE.

Highest, 88° on 31st; lowest, 53° on 1st; greatest daily range, 25° on 8th; least, 10° on 2d; normal for this month, 67.1°; absolute highest this month for 26 years, 98°; lowest, 35°; average daily excess for this month as compared with normal, 3. 3°; accumulated excess since January 1st,.....403°; average daily excess since January 1st.. 2. 7°.

PRECIPITATION.

Monthly total..... 2. 69 in.
Greatest in 24 hrs.... 1. 12 in. on the 2-3d.
Monthly normal ... 2. 43 in.
Deficiency this mo.. 0. 74 in.
Total since Jan. 1st. 18. 81 in.
Normal Jan. 1st. to date..... 18. 24 in.
Total snowfall during month.... 0. 0 in.
On the ground at end of month.. 0. 0 in.

WIND.

Prevailing direction.....Southwest
Total movement..... 7102 mi.
Average hourly velocity..... 9. 5 mi.
Maximum velocity (for 5 minutes) 40 mi. from the West on the 22d.

MISCELLANEOUS PHENOMENA.	DATE.
Auroras	None
Solar Halos	None
Lunar Halos	None
Sleet	None
Fog, light	27
Fog, dense	None
Thunderstorms	4,6,12,18,22,24,25
Frost, light	None
Frost, heavy	None
Frost, killing	None

Note. "T." trace, amount too small to measure.

Exhibit 3
Feb 28, 24
W.M.S.C.

A. V. Brand
METEOROLOGIST.

341a

Q. In your opinion, would the same result have followed if the wharf boat had been a new boat.
A. I think so.

Witness excused.

Mr. Darby: We would like to offer in evidence the records of the Weather Bureau, showing the stage of the river at Evansville each day, during the month of May, 1922.
Mr. Cutler: This is just a printed card. We don't care to object, if it can be shown that it is a proper record.
Mr. Darby: I suppose that everybody in Evansville is familiar with the signature of the weather man, who has been down there for twenty years.
Mr. Cutler: I don't know whether that is his signature or not.
[fol. 341] The Court: Of course, the record is evidence, if this is the record.
Mr. Darby: This was secured from the Weather Office by Judge Welman, and we didn't suppose there would be any objection. We will ask the reporter to identify the Weather Bureau card as "Exhibit No. 3," and we offer it in evidence.
Mr. Cutler: I believe that is correct, your Honor, and we don't object to it.

The said Weather Bureau card, so offered, was admitted and read in evidence, was marked "Exhibit No. 3," and the same is in the words and figures following to-wit.

(Here follows reproduction of card, marked side folio page 341a.)

[fol. 342] Mr. Darby: The Petitioner rests, your Honor.
The Court: Proceed with the defense.

Whereupon, the respondents, to maintain the issues on their behalf, offered and introduced the following evidence, to-wit:

Roy E. Largent, a witness called on behalf of the Respondents, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Schmidt:

Q. Please state your name to the Court.
A. Ray Edward Largent.
Q. Where do you live.
A. Evansville, Indiana.
Q. How old are you.
A. Thirty.
Q. What is your occupation.

[fol. 343] A. Truck driver.

Q. For whom.

A. The United Produce Company, of Evansville.

Q. How long have you been so employed.

A. Seven years.

Q. During your employment in that capacity, has it been your duty to go to the Evansville wharf boat.

A. Yes sir.

Q. How often during the week, during the past seven years.

A. Oh, three to four times a week—a day, rather—sometimes two or three times a day.

Q. During the month of May, 1922, do you recall the incident of the wharf boat sinking.

A. Yes sir.

Q. It sank on Sunday, I believe.

A. Yes sir.

Q. Were you there with a truck load of merchandise for the United Produce Company, in the afternoon, on Saturday.

A. Yes.

Q. State to the Court, with reference to the amount of cargoe that [fol. 344] was stored on the wharf boat on Saturday afternoon—whether it was heavily loaded or lightly loaded.

A. Yes sir, it was about a third more than I have ever seen on it—a third to a h-lf more.

Q. About what time in the afternoon on Saturday, was that, that you were there.

A. From five to five-thirty.

Q. On Saturday, May thirteenth, 1922.

A. Yes sir.

Q. What kind of a truck were you driving that day.

A. A five ton White truck.

Q. Did you have a heavy load on that truck.

A. I had about three tons on it.

Q. Did you drive with it down the levee, on to the wharf boat.

A. Yes sir.

Q. Did you unload that merchandise on the wharf boat.

A. Yes sir.

Q. And did you have any difficulty in getting off and on the wharf boat, by reason of the cargo that was on there.

A. Yes sir.

Q. State what caused that difficulty.

[fol. 345] A. The freight was piled up in the centre, and the road was almost blocked, where you drive in, and it was hard to steer around in there, to get in or get out.

Q. And you say that the load that was on, at that time, was heavier than you had ever seen it before, in the five years previous that you have been taking merchandise to that wharf—is that correct.

A. Yes sir.

Q. From a third to a half more.

A. Yes sir.

Q. That was only on this particular day, wasn't it, that that was the case.

A. Yes sir.

Q. Did you hear any pumps on the wharf boat, in action.

A. Yes, sir.

Q. State what you heard.

A. Well, I noticed—I took particular notice to the pump running up under the office. That is the only one I noticed anything about. I remember the pump running, and I mentioned it to the driver, when we got in the garage.

[fol. 346] Q. When you drove on to this dock, at the side of the wharf boat, which formed a connection between the wharf boat and the land, was the level of the floor of this dock higher, or lower than the floor of the wharf boat, ordinarily.

A. It was higher than ordinary.

Q. In other words, the floor of the wharf boat, on this day, was lower than the floor of this dock.

A. Yes sir.

Q. So that there was a jump-off from the dock on to the floor of the wharf boat.

A. Yes sir.

Q. Will you state to the Court about how much that jump-off was, in inches.

A. About two inches.

Q. About two inches.

A. Yes sir.

Q. Normally, and ordinarily, how much higher is the floor of the wharf boat that the floor of that dock—do you know.

A. Do you mean when it is unloaded—when the wharf boat is unloaded?

Q. With an average load, day in and day out.

[fol. 347] A. We usually make a jump of about six inches to get into the boat.

Q. And sometimes you have to put boards up from the dock.

A. Yes sir, sometimes it is more of a jump.

Q. Was that the condition on this particular day? By reason of the load, in your opinion, did it cause the floor of the wharf boat to be from six to eight inches lower than it was, normally, on other days—is that correct.

A. I don't know exactly what you mean.

Q. I mean, if it was normally from four to eight inches—the floor of the wharf boat was from four to eight inches higher than the floor of the dock.

A. Yes sir.

Q. And then it was two inches, on this particular Saturday afternoon, below the floor of the dock.

A. Yes.

Q. Then the floor of the wharf boat, itself, was about eight inches on this particular Saturday afternoon, than it was normally, when you usually went down there.

[fol. 348] A. No sir, the floor of the wharf boat was about two inches lower.

The Court: You ran out on something, and then there is a kind of an apron, or thing that carries you from that over to the boat—is that true.

The Witness: Yes sir.

The Court: What does this runway that goes out to the boat—what does it rest on?

Mr. Welman: There is an apron that goes up to the float, and the float is by the wharf boat.

The Court: And where he is talking about this two and four inches—that is between the floor and the wharf boat?

Mr. Welman: Yes sir.

The Court: The float floats, does it?

Mr. Welman: Yes sir.

Cross-examination.

Questions by Mr. Welman:

Q. What was that load of yours composed of, on that day.

[fol. 349] A. Potatoes and cabbage and the usual load.

Q. There was a difference in the floor of about two inches when you went in, between the float and the deck of the wharf boat.

A. The floor of the wharf boat was about two inches lower than the—after I was up there with my load. You see the dock sinks when I drive up.

The Court: Before you drove up there, how was it.

The Witness: I don't know. I wasn't there. But after I got on the dock—just before I went on, it was about two inches lower than the dock.

The Court: How much did you push it down when you went on.

The Witness: The wharf boat?

The Court: Yes.

The Witness: I didn't notice.

Q. The bulk of the load in the wharf boat, inside was furniture, wasn't it.

A. No sir.

[fol. 350] Q. What was it—chickens.

A. They had a few chickens—not many.

Q. What was the bulk of the load.

A. Just ordinary groceries and produce and cement, and everything.

Q. Crackers.

A. I didn't take particular notice of everything.

The Court: When you said it was a half to a third more than you had ever seen it, did you mean in bulk, or weight.

The Witness: In bulk.

The Court: It looked bigger to you—is that what you mean.

The Witness: Yes sir.

Redirect examination.

Questions by Mr. Schmidt:

Q. The man who receipted for this merchandise that you brought on, on that occasion—do you remember his name.

A. Yes sir. It was August Kuatz.

[fol. 351] Q. He was the agent of the Evansville and Bowling Green Wharf Boat Company.

A. Yes sir. I don't know whether he was the agent, or not, but he received the freight.

Q. He was the same man who had done that for a number of years.

A. Yes sir, and he does it yet.

Q. Were there any boats overdue, that were expected there that afternoon.

A. The Bowling Green boat was supposed to be there—that we were hauling stuff for.

Q. And that wasn't in.

A. No, there wasn't any boats in when I got there.

Witness excused.

George Kohl, a witness called on behalf of the Respondents, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Schmidt:

Q. Please state your name.

[fol. 352] A. George Kohl.

Q. You live in Evansville.

A. Yes sir.

Q. And you are employed by the United Produce Company.

A. Yes sir.

Q. And have been so employed for the last seventeen years.

A. Yes sir, the first of April.

Q. During the longest portion of that time, you have been engaged in driving a truck for that Company.

A. Yes sir.

Q. And your duties required you to drive that truck on to the Evansville wharf boat.

A. Yes sir.

Q. Do you recall the Saturday afternoon prior to the Sunday on which the wharf boat sank, May 14, 1922.

A. Well, I had just a few articles to go on, and I didn't drive on—I just carried them on.

Q. What time of day, on Saturday, May 13, 1922, were you there.

A. Between four and five o'clock.

Q. Who was on the wharf boat for the wharf boat Company, at that time.

[fol. 353] A. To receive the goods?

Q. Yes.

A. Gus Kuntz was there.

Q. And he had been so employed there during the time that you had been delivering merchandise there, for several years.

A. Yes sir, a good long while.

Q. Now, with reference to the amount of goods and merchandise stored on this wharf boat on that occasion, state to the Court whether it was greater or less than was normally stored on there.

A. It was greater.

Q. Would you be able to tell the Court how much greater.

A. Well, the way it looked from the shore, it was pretty near half again as much as I had ever seen there before.

Q. You mean the bulk of it.

A. Yes sir.

Q. And you could tell that by the gangways and the passages being blocked, could you.

A. Yes sir.

Q. Do you know whether or not you were the last man to deliver merchandise there, that evening.

[fol. 354] A. Mr. Largent was the man who delivered the last goods there, and I was just ahead of him.

Q. There were no other trucks on the levee after Mr. Largent had delivered his load.

A. Mr. Largent was the last one on there.

Q. Did you hear any pumps on the wharf boat, there, when you went on the boat.

A. I heard the engine running, and I seen the engine running.

Q. Was that near the downstream entrance to the wharf boat.

A. Yes sir, right under the office, there.

Q. Do you remember whether or not the engine up at the other end of the boat, was running.

A. I couldn't tell, but this engine, down below was running.

Q. Did you notice the fact that the floor of the wharf was much lower, on this particular afternoon, than the floor of the pontoon or dock.

A. Yes sir, it was lower.

Q. Will you state about how much.

A. I think about that much (indicating)—that was the jump-off from the dock on to the boat.

[fol. 355] Q. Do you mean breadth of your four fingers.

A. Yes, about that much, I imagine.

Q. On previous occasions, when you had been on there, the floor of the wharf boat was several inches higher, was it.

A. Yes sir.

Mr. Darby: I object to that as leading.

Mr. Schmidt: I am just doing it to make speed. Technically, you are correct.

Cross-examination.

Questions by Mr. Welman:

Q. You didn't know the weight of the cargo on the wharf boat, did you.
A. No sir.
Q. You could just judge by the bulk.
A. Well, you could see that there was heavy stuff in there—potatoes weigh a good deal.
Q. You judge there was a third to a half more, from the bulk of the freight.
[fol. 356] A. Yes sir.

Redirect examination.

Questions by Mr. Schmidt:

Q. You also judge——

Mr. Welman: Let him judge himself.

Q. By reason of the weight, the wharf boat was down lower.
A. Well, of course, if there was more weight in there, it would go down lower.
Q. Do you know whether or not any boats were overdue, that were expected to be in there that afternoon.
A. They were supposed to be in there, but they wasn't in, I know.
Q. Can you give the names of the boats that were expected.
[fol. 357] A. The Bowling Green boat was one of them. I don't know anything about the rest of them.
Q. On Saturday afternoon, normally, are there numerous boats in the harbor.
A. I couldn't tell you that. Sometimes they are, and sometimes they ain't—if they are on time, they are supposed to be there.

Witness excused.

Harry Hummell, a witness called on behalf of the Respondents, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Cutler:

Q. Please state your name to the Court.
A. Harry Hummell.
Q. Where do you live?
A. Evansville, Indiana.
Q. What is your business or occupation.
A. Captain of the Fire Department of Evansville.
[fol. 358] Q. How long have you been captain of the Fire Department.

A. Two years.
Q. How long have you served in the department.
A. Seven years.
Q. On May 14, 1922, where were you stationed.
A. At number two hose house.
Q. Just tell how far that is from the Evansville wharf.
A. About three and a half blocks.
Q. Did you receive a call from somebody at the wharf boat, Sunday morning, when the boat sank.
A. Yes sir.
Q. What time did you receive that call.
A. Well, we left the hose house at four thirty-seven.
Q. You are required to keep a record of those calls, are you.
A. Yes sir.
Q. State whether you made a record at that time.
A. Yes sir.
Q. How long did it take you to get down to the wharf boat.
A. About three minutes.
[fol. 359] Q. How long did you get the call before you left.
A. We left the same as going to a fire.
Q. Immediately.
A. Yes sir.
Q. Who went with you.
A. The captain and the driver and two other firemen.
Q. When you got down there, who did you see down there on the boat.
A. There wasn't anybody on the boat, but this watchman, this night watchman, came running off, and stopped me, and said, "Drive right on," and I told him, "no," and he said, "Our big pump won't work." He said, "The big pump wasn't working," and I got off the wagon and I said, "How long has it been filling up?" And he said, "Ever since one o'clock." And I said, "Why didn't you call sooner?" And I asked him if there was a telephone on the wharf, and he said, "yes," and I said, "I would like to use it." He said, "all right," and I telephoned to the assistant chief——

Mr. Welman: We object to that as not being an answer to the question.
[fol. 360] The Court: Yes, this conversation is all incompetent, but there is no objection to it.

A. (continued). I walked around on the wharf, and about the time I thought the chief would come down, I met him on the bank, and went on the wharf, and we wasn't on there but about five minutes, and she commenced cracking and going down, and I said to the chief, "Get off. She is going to sink."
Q. Do you know anything about the time the boat sank.
A. Just about five o'clock.
Q. What sort of an examination did you make, or what did you do with reference to going on the boat.
A. I just walked around on it.
Q. Did you walk from one end of the boat to the other.

A. I walked in one door and out the other.

Q. Tell the Court whether or not you heard any pumps in operation.

[fol. 361] A. I never heard a pump, or anything.

Q. Did you hear any gasoline or electric motors, either one.

A. No sir.

Q. If there had been any pumps in operation, could you have heard them.

A. Yes, because I was all over the wharf.

Q. What was the condition of the boat as to being loaded with freight.

A. It was a pretty good load on it. Of course, I had never been on it before, much, but it was pretty well loaded, because it was all over the wharf.

Q. Whether there was much space, except for gangways for the truck.

A. No, there wasn't so awful much space.

Q. Now, you went on the boat, on one driveway—was that the upstream, or downstream.

A. That was the downstream door.

Q. And you walked up to the other driveway, on the upstream end.

A. Yes sir.

[fol. 362] A. And came out at that end.

A. Yes sir.

Q. What was the condition of the boat as to listing or leaning over.

A. She was kind of leaning towards the river side.

Q. Did you notice whether or not there was more freight on the river side than on the land side.

A. There was flour and stuff stacked over on the river side.

Q. State whether or not you noticed anyother heavy freight, in the way of hardware, or cement or anything of that kind.

A. Well, there was a mass of stuff piled there—plows and things.

Q. State whether it was stacked up as high as it could be stacked up on the boat.

A. It was stacked up pretty high. In some places, that high (indicating).

Q. When you spoke of the watchman who came out, do you mean Mr. Wallace, who was on the stand this morning.

A. Yes sir.

[fol. 363] Q. Is he the one that you had a conversation with about the back pump not working.

A. Yes sir. He called to me, and he said, "Drive"——

Mr. Welman: We object to that your Honor.

The Court: The objection is sustained.

Q. Were they doing anything on the wharf boat, with reference to removing any of the freight.

A. No sir.

Q. Did you see any men standing around there, when you first got down there.

A. There was a few men around there.

Q. About how many men were standing around there.

A. I guess there was about ten or fifteen men, or something like that.

Q. State whether they were negro roustabouts.

A. Some of them were.

Q. Standing where.

A. On the bank right where we stopped with the wagon.

Q. State whether you know, as a matter of fact, whether there [fol. 364] are negro boarding houses where they board up on the levee.

A. Yes, they are all around there.

Q. And rooms.

A. Yes sir.

Q. State whether there was any effort made to carry off any of the cargo, during any of the time you were there.

A. No sir.

Q. In your experience as a fireman, state whether or not is is frequently your duty to carry out furniture and property, from houses, and goods from warehouses, in order to save them from fire.

A. Yes sir, at times

Q. Considering the number of men that you saw about the boat, there, at the time you got down there, state whether or not, if this leaking began at one o'clock in the morning, whether or not, in your opinion, a part of that freight could have been saved.

Mr. Darby: We object to the question.

[fol. 365] The Court: Let him answer. Of course it could.

A. Why, yes, the live stock and the perishable stuff could have been taken off.

Q. Was there any live stock on the boat at the time she went down.

A. Yes sir, there was lots of chickens and hogs.

Q. Did you see any other of the officers of the Evansville and Bowling Green Packet Company, when you got down there, excepting night watchman.

A. No sir.

Q. When you got there, was there some property or cargo being loading on the boat.

A. There was some roustabouts carrying it from the bank over to the wharf, but whether they were taking it on the boat, or on the wharf, I don't know.

Q. About how many of them were doing that.

A. I think there was about three or four.

Q. What time was that, do you say.

A. That was just as we got down there—about quarter to five.

[fol. 366] Cross-examination.

Questions by Mr. Welman:

Q. Where were the stock when you got down there—the live stock.

A. The chickens were piled on the wharf, right as you go into the door.

Q. That is what you call live stock.
A. Yes sir.
Q. Were there any hogs, or cattle there.
A. Yes sir, there was hogs there.
Q. Where were they.
A. The hog was laying there, just inside of the door.
Q. In a box.
A. No, he was just laying there.
Q. Any cattle there.
A. There was a hog.
Q. How many hogs were there.
A. One.
Q. How many cattle.
A. Just a hog and chickens—live stock.
Q. And that is what you meant by the cattle, there—that the cattle could have been taken off or the stock.
[fol. 367] A. The stock—the chickens and stock.
Q. And that was quarter to five.
A. We got down there at twenty minutes to five.
Q. And which way were the roustabouts going.
A. They were coming and going, backwards and forwards.
Q. And how long was it after you got there, until the boat sank.
A. About twenty minutes.
Q. It took you twenty minutes to walk through.
A. No, I didn't say that. I was talking to him before I went on to the boat, to telephone, and after I telephoned I walked around over the wharf, and then came back and went to the chief, and went back on the wharf.
Q. The deck of the boat or the floor of it, was nearly level, when you first walked in there.
A. It was just slanting a little bit.
Q. And then it sank within less than twenty minutes.
A. Yes sir.
Q. When had you made your last call in the fire department, that night.
A. They called us.
[fol. 368] Q. When had you made a run, or a call, just before that.
A. Four thirty-seven that morning, to the wharf.
Q. But when had you made the last call, as a fire department, before four thirty-seven.
A. Oh, I don't know.
Q. You had just come in from a fire call, had you.
A. I don't know.
Q. You don't know that, either.
A. No sir.
Q. You were notified about four thirty-seven.
A. Yes sir.
Q. And the boat sank at five.
A. Yes sir.
Q. Was there any other boat there besides the wharf boat.
A. There was a boat fastened on the outside of the wharf, yes.

Mr. Cutler: Was there any call for you before four thirty-seven, to the wharf boat.

The Witness: No, that is the only call we got, was at four thirty-seven.

Witness excused.

[fol. 369] GEORGE A. RICKICH, a witness called on behalf of the Respondents, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Cutler:

Q. State your name to the Court.
A. George A. Rickich.
Q. Where do you live.
A. Evansville, Indiana.
Q. What is your business.
A. Driver in the Fire Department.
Q. How long have you been—

Mr. Welman: Your Honor, we have no witnesses to contradict this testimony, and we don't care to take any time of the Court, on that proposition.

The Court: I don't know what he is going to testify to.

[fol. 370] A. It is practically all the same—we were all there together.

The Court: I don't see the importance of it, myself.

Mr Welman: We are not going to offer anything in contradiction of it.

Q. How long have you been a member of the Fire Department.
A. Ten years.
Q. What do you know and what took place with reference to the sinking of the wharf boat, as far as you know.
A. We drove down there and got down there about twenty minutes after four, and we hadn't any more than got down there until they wanted us to drive on, and it wasn't safe for us, for a heavy truck to drive on, to pump, and we couldn't pump without we drove on, and the captain called up the chief, and we was through the boat before it went down.

[fol. 371] Q. Do you say you went through the boat?
A. We went through one door and out the other. We went through the boat from one end to the other.
Q. State whether or not you heard any pumps in operation.
A. We didn't hear any, at that time.
Q. Either gasoline or electric pumps?
A. No pumps at all.
Q. Did you see Mr. Wallace, who was on the stand this morning—the watchman.
A. Yes, he was there.

Q. Did you have any conversation with him.
A. No sir, only when he first come out to the wagon, as we drove up—he said, "The big pump won't"——

Mr. Welman: Wait a minute. We object to that.
The Court: The objection is sustained.

Q. What was the condition of the wharfboat as to being heavily loaded with cargo?

[fol. 372] Mr. Darby: We object to that, as too indefinite.
The Court: He may answer, if he knows.

A. It was loaded with furniture and flour, and everything like that. Cement, chickens and everything. There ain't nobody could tell how heavy it was.
Q. State whether or not the space was all taken up.
A. It was well loaded—it had a lot of furniture on it.
Q. State whether or not, when you got down there, the boat was leaning, somewhat.
A. It was leaning towards the river.

The Court: What is the difference, whether it was leaning just at the time he went down there? I don't see the relevancy of this testimony.

Q. State whether or not you saw any men around there—roustabouts?
[fol. 373] A. There was colored fellows around there.
Q. About how many would you say?
A. Oh, I expect there was about ten or fifteen men around there.
Q. Was there anything being done about carrying off any of the cargo?
A. I never seen a piece carried off.
Q. State whether, your experience as a fireman, in carrying stuff from burning buildings, whether, in your opinion, it would have been possible, with the number of men around there, it would have been possible to carry off a considerable part of the cargo, from one o'clock to five o'clock.
A. From one o'clock to five they could have got a whole lot of it off.
Q. What proportion, do you think.
A. They could have got the light stuff off, but they wouldn't have got the heavy stuff off.

[fol. 374] Cross-examination.

Questions by Mr. Welman:

Q. The boat sank within twenty minutes after you got there.
A. Yes sir, it sank right at five o'clock.
Q. When do you say you got the call at the hose house?
A. At four thirty-seven——
Q. I though you said four twenty.

A. Not me.

Q. Were there any other people going towards the wharfboat, as you went down there.

A. At that time of night you hardly ever see anybody, if you drive one of them trucks.

Q. There isn't hardly ever anybody around the wharfboat at that time of night.

A. There was plenty of them there at that time.

Q. Do you know how long they had been there?

A. No, I do not, because I wasn't there.

Q. You don't know anything about the weight of the cargo?

A. No, I haven't any idea what the weight of the cargo was, that was on it.

Witness excused.

[fol. 375] R. H. Williams, a witness called on behalf of the Respondents, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Cutler:

Q. Please state your name.

A. R. H. Williams.

Q. What is your business, or calling.

A. I am United States Inspector of Steamboats.

Q. How long have you held that position?

A. About twenty to twenty-three years.

Q. What experience, if any, have you had in the way of boats, prior to that time.

A. I steamboated about twenty-five years, I guess.

Q. On the rivers?

A. Yes sir.

Q. Have you ever inspected the wharfboat—your duty as inspector, is what?

A. Inspecting steam vessels.

Q. You inspect the hulls.

A. Yes sir.

[fol. 376] Q. Did you ever have occasion to inspect the hull of this wharf boat.

A. No sir.

Q. That is not within the Government regulations?

A. No sir.

Q. From your experience as an inspector, and also your experience as a river man, I will ask you to state whether or not proper practice for repairing and caulking hulls, permanently, consists in caulking them with concrete.

Mr. Darby: We object to that, for the reason that the question is not confined to the kind of boat in question in this lawsuit.

The Court: No.

A. Temporarily,—for temporary purposes, only.

Q. What, in your opinion, would be the effect upon the seaworthiness of a wharfboat, to, the size, length and width of the Evansville wharfboat, from concreting the inside, the knuckles, all the way around the boat, and up the sides, to a height of about eighteen [fol. 377] inches, or two feet, with a thickness of about eight inches of concrete. What effect would that have upon the staunchness of the vessel?

A. Well, it depends on how it was put in.

Q. Suppose the concrete was put in without any steel reinforcements of any kind, and a wooden form built up, and the concrete put in between the wooden form and the wooden side of the boat, all the way around.

A. If concrete is put in between two timbers, it can be put in there all right, *put* concrete put in without any reinforcing, or anything to hold it, the waves, the surge of the boat would break it loose.

Q. State whether or not heavily loaded trucks—four or five ton trucks, with heavy loads on them—driving on the wharf boat would have a tendency to loosen the concrete.

A. Well, I think it probably would, yes.

Q. Especially if there were no I-beams along the driveway, where the trucks go on to the wharf boat—whether that would have a [fol. 378] tendency to crack the concrete?

A. Yes, I expect it would.

Q. What about the effect of the waves and the winds, even, on a wharfboat of those dimensions—what effect would that have to break a solid wall of concrete.

A. Well, a wharfboat lays still. It is only the waves, and the boat is so large that the waves would have very little effect on it.

Q. State whether or not it would have some effect on a boat like that?

A. I don't think it would have so much effect—well, if it was very rough, it would, but I think the trucks would have more effect than that would, because they make the boat surge.

Q. Is it possible to caulk a boat without taking her out of the water?

A. No sir, but it can be temporarily caulked, but not a substantial one.

Q. Explain, briefly, how caulking should be put in, to make an effective job.

A. It should be put in from the outside, and the planks bevelled, [fol. 379] so that the seam is smaller on the inside than on the outside.

Q. State whether it is possible to caulk on the inside of a boat while she is in the water, to make a good job.

A. Not to make a good job, no.

Q. Or anything except a temporary job.

A. Temporary, yes.

Q. What, in your opinion, in a boat with a hull of the dimensions of the Evansville wharfboat, which you have heard testified about,

would be essential in the way of pumps to keep her pumped out and prepared against emergencies?

A. Well, I don't know—against emergencies, and the rupture of her hull, it would take a good big pump; but under normal conditions, it wouldn't take very much.

Q. How does the size of the Evansville wharfboat hull, compare with the steamboats that are going in and out of the Evansville port, as to size.

A. Oh, it is a good deal larger than any steamboat—I expect two or three times as large as a steamboat hull.

Q. With that in view, what would you say would be in your [fol. 380] opinion as an inspector, and an official, and also as a river man—what would be required in the way of pumps on a boat the size of the Evansville wharfboat.

A. I don't know what she had.

Q. I mean, how much she should have, in your opinion considering the size of the hull.

A. Well, as I said, if it is for normal purposes, two or three pumps would get the water out—or seepage, or light leakage—but in case of sudden obstructions coming through her, of course it would take larger pumps.

Q. In boats of that size, under the Government regulations, with hulls of that size, what capacity pumps they be required to have?

A. There is no requirement—there is no law requiring a certain number of pumps. That is up to the judgment of the local inspector.

Q. In your experience as an inspector, in your judgment, what would you say should be required?

A. Well, it depends on the size of the hull.

Q. I mean a hull that is the size of the Evansville wharfboat.

[fol. 381] A. Well, as I said——

Mr. Welman: Do you mean a steamboat the size of the wharf boat?

Mr. Cutler: Yes.

The Court: What difference does it make whether it is a steamboat or a wharf boat? Do you want to make a destinction between a wharf boat and a steamboat? You may lose out. This may be a case in admiralty. You will have to stick to the wharf boats. Of course the pumps ought to be big enough to pump the water out.

Q. From your experience as an inspector of steamboat hulls, what, in your judgment, should be required in the way of pumping facilities, on a steamboat or a vessel navigating the Ohio River, in the way of pumps, where the hull of the boat is the size of the Evansville wharf boat.

A. Well, we never had any that large, but on the usual steamboats, they have, probably from four to six, and sometimes eight little [fol. 382] pumps, two, two and a half and three inches, and they generally have an emergency pump under the boiler, maybe four to six inches, in case of hitting an obstruction or puncturing the hull. That is an emergency pump.

Q. And that is what you would require in inspecting a boat.
A. Yes sir.

Cross-examination.

Questions by Mr. Darby:

Q. You are not related to Captain Thomas Williams, or Jeff Williams, are you.
A. Not that I know of, no.
Q. The likelihood of a steamboat striking a submerged obstruction, is much stronger than that of a wharf boat, is it not.
A. Oh, yes, there is no doubt about that.
Q. Steamboats carry people as passengers, of course.
A. Yes sir.
Q. Now, you speak of certain differences in the construction of a [fol. 383] wharf boat, such as the Evansville wharf boat, as compared with steamboats. Now, there are many points of similarity, are there not, in construction of the two.
A. Well, yes, there is some similarity. They have a bottom and sides to them.
Q. Aren't there a great many more than that.

The Court: Oh, why take up time with that? The Court knows the similarities and the dissimilarities.

Q. I will ask you if it isn't true that the Evansville wharf boat—the exterior of the Evansville wharf boat had all of these elements of construction, every one of which a steamboat has, referring now, to the exterior or hull: a cargo box, hog chains, hog chain braces, forecastle, two capstans, four beads, two spars, a guard on the outboard side, about six cavils, outriggers, cross-timbers that support the deck, and the nosing.

[fol. 384] Mr. Kahn: We object to that as not cross-examination.
The Court: Overruled. He may answer.

A. They are similar, yes. I don't know how many cavils, and how many outriggers, and how wide the guards were, and how many capstans they had on it, because I never noticed that.
Q. I am asking you if the Evansville wharf boat, in its exterior construction, did not have, and doesn't have all the things I have mentioned.
A. Yes sir.
Q. Which are all things that every steamboat has.
A. Yes sir.
Q. Now, taking the interior construction of the Evansville wharf boat, I will ask you if it doesn't have all of those elements of construction which every steamboat also has——
A. Well, they have them, but they are in different shape.
Q. Let me finish—a deck, bulkheads, kelsons, stanchions, side-[fol. 385] planks, floor-timbers, fettocks, or futticks, bilge kelsons, or knuckle kelsons, grub-streaks, Knuckle-streaks or saddle-streaks,

bottom-planks, a keel, pick-up chains, tie-chains, knuckle-chains, clamps?

A. Well, this boat probably had all of those, but I don't know that she had them.

Q. Well, you have observed them in the wharf boat, haven't you, in your general observation.

A. No, I never was in her hull.

Q. Doesn't every wharf boat on such construction as this one in question is, at Evansville, have the things that I have mentioned, which are also things that every river steamboat has—that is correct, isn't it.

A. Well, some wharf boats are built different, without these futticks. They have floor-timbers, pump-timbers, side-timbers, planks on the sides, and on the bottom, but——

Q. You have observed these things that I have mentioned, or the most of them, on the Evansville wharf boat, have you not.

[fol. 386] A. Yes, I have seen some of them—yes.

The Court: A structure might have every one of them, and not be the subject of admiralty, and it might *like* a few of them, or a number of them, and still be a ship.

Q. You speak of concrete for temporary purposes——

The Court: That is just what your witnesses testified to. Why do you want to cross-examine him on that? Do you want to prove that your witnesses were not right? He agreed with them.

Q. When you say that concrete is proper only for temporary caulking, you mean to carry the boat in seaworthy condition until the time has arrived for it to be taken out and put on the ways.

A. Yes, for temporary purposes.

[fol. 387] Mr. Cutler: Will you name some of the ways in which the Evansville wharf boat is different from the steamboats.

The Witness: Oh, yes. A wharf boat is a square box, and a steamboat is——

The Court: Yes, it has no engine, or a boiler, or a wheel, or a rudder, or a whistle. If it had a boiler and an engine and a rudder, it would be a boat, wouldn't it?

The Witness: Yes sir.

Witness excused.

OSCAR BEDECKER, a witness called on behalf of the Respondents, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Cutler:

Q. Please state your name to the Court.

A. Oscar Bedecker.

Q. Where do you live.

[fol. 388] A. Evansville, Indiana.

Q. You are an officer of the Bedecker-Kellogg Company.

A. One of the vice-presidents.

Q. And had charge of the shipment of this freight on the Evansville wharf boat.

A. No, I didn't have charge of that. We have a shipping clerk.

Q. But your company did have some goods on the boat when it sank.

A. Yes sir.

Q. For which you filed your claim before the Master.

A. Yes sir, about eighteen hundred dollars worth.

Q. Have you ever gotten any of it.

A. We never have gotten a cent.

Q. State whether or not, you made a demand, and afterward followed that by a suit in the Superior Court of Vanderburg County, Indiana.

A. Yes sir.

Q. And were prevented from going any further by the order of this Court.

A. Yes sir.

[fol. 389] Q. What arrangement did you have with the Evansville Wharf Boat Company about the storage charge on the wharf boat.

A. We paid them fifteen dollars a month to haul the freight on the wharf boat and get a receipt for it, usually on the day that the boat is supposed to sail, or leave the wharfboat.

Q. And at the time she sank, in May, 1922, you were, at that time, paying fifteen dollars a month storage charge for use of the wharf boat.

A. I think that was the amount, at that time. I know it is fifteen dollars now.

Q. You never salvaged any of your property.

A. We did not.

Cross-examination.

Questions by Mr. Welman:

Q. This fifteen dollars that you paid a month, is for the privilege of taking the goods down there the day the boat leaves Evansville, I understand it—in other words, you take your merchandise——

[fol. 390] A. Just a minute. I have all these receipts.

Q. I didn't ask you about any receipts. This fifteen dollars that you paid, per month, is for what you say is storage on goods, and if those goods are taken down there the day the boat leaves Evansville, to carry these goods away——

A. Yes, and we are not supposed to haul them only on the day the boat leaves. I don't know, really, what the charge is for.

Q. You don't take goods down there a day or two before the boat leaves, do you.

A. Occasionally we do that, by permission.

Q. By special permission.

A. Yes sir.

Q. Do you say you made a demand for your lost goods.

A. Yes sir.

Q. Did you make it in writing.

A. I don't know just how we did make it. Our credit man has that in charge, and he made a demand, and they turned it over to the attorney, for collection, and we never did collect any money.

Q. You can't say whether it was in writing.

[fol. 391] A. I am satisfied it was in writing. We have a record of that.

Q. Why are you now satisfied that it was in writing.

A. We always have a rule——

Mr. Welman: Then if it is in writing, your Honor, I demand that the writing is the best evidence of what was done.

The Court: Yes, but what is the materiality of this, anyhow?

Mr. Welman: I move to strike out his answer.

The Court: I don't see the materiality of it, anyhow.

Mr. Kahn: It may become important for this purpose, with reference to the matter of total exemption, in that the Claimants are in this Court by virtue of a restraining order. That is to say, the claim had to be filed in this proceeding before they had a voice to contest this action.

[fol. 392] The Court: Yes, they had to be in Court, but if this wharf boat is subject to admiralty jurisdiction, of course that had to be done, and all the rules and laws applicable to it in admiralty, had to be applied. Now, what difference does it make ——

Mr. Kahn: We want to preserve this one feature of it. Perhaps this is not within the admiralty jurisdiction. The liability of these people may be that of a warehouseman. The point is that they are here now, at this time, in pursuance of the order of this Court, and may, under the statute, in that case provided, and not in the first instance seeking to pursue their claim as an admiralty claim.

Mr. Welman: I make this point, that wherever a claim is filed on a bill of lading that provided that within a certain time, a written claim must be filed, and that that is a condition precedent, and they cannot get away from it, and unless such claim, in writing, is filed within that time, then there is no virtue, and they have no right to proceed with the case.

[fol. 393] The Court: Then you are making an entirely different point from what you made before. Your objection, a while ago, was that the writing was the best evidence. This last suggestion I never heard before.

Mr. Welman: The last motion I made, your Honor, was to strike out his answer that he filed a claim.

The Court: He has not testified that he filed a claim. He testified that he made a demand and brought suit, and then was enjoined and compelled to come into this Court. That is what he testified.

Mr. Welman: Yes, your Honor, I stand corrected.

Witness excused.

[fol. 394] F. A. DICKMAN, a witness called on behalf of the Respondents, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Kahn:

Q. State your name.
A. F. A. Dickman.
Q. You are the credit manager for the Globe-Bosse-World Furniture Company.
A. Yes, manager and cashier.
Q. Was that company one who had merchandise aboard at the time of the sinking of this wharf boat.
A. Yes sir.
Q. Did that company have an arrangement with the Evansville and Bowling Green Packet Company, with reference to the use of the wharf boat at Evansville, at that time.
A. Yes sir.
Q. Will you please state what it was.
A. The arrangement, at that time, was two dollars and a half [fol. 395] per month, a flat rate, for the privilege of loading freight on the wharf. They received it on the wharf, and then reloaded it on to the boats as they came in.
Q. Did that pay any part, or all of the transportation charge.
A. Not one cent.

Cross-examination.

Questions by Mr. Welman:

Q. You mean that you paid that in addition to the freight rate.
A. Yes sir, and the privilege to load on the wharf.
Q. And you loaded this merchandise on the wharf boat on the day that the boat would leave Evansville to carry those goods away.
A. Yes sir.
Q. And at the time that you put those goods on the wharf boat, they showed they issued a bill of lading for the carriage of those goods.
A. Yes sir.

[fol. 396] Redirect examination.

Questions by Mr. Kahn:

Q. Were you limited to taking goods there only on the day that the boat went out? Suppose the boat went out on Sunday.
A. In this case here, I remember particularly, the goods were billed for Nashville, and they were taken there on the Saturday, and the wharf boat sank on Sunday morning. So that, in this case, here, the goods were delivered before the boat left.
Q. When was that boat expected to leave, if you know.
A. I have no knowledge of that, at this time.

Q. State whether or not, your charge didn't also cover merchandise that might have been shipped back to you by water, and put on the wharf boat, so that you could take it off of there.

A. Yes sir.

Q. I mean, incoming merchandise, by river.

A. Yes sir.

[fol. 397] Q. Do you know in what capacity the wharf boat company acted, at the time they issued bills of lading.

Mr. Welman: We object to that as a question of law.

A. The question is not clear to me.

Q. Do you know in what capacity the Evansville and Bowling Green Packet Company acted, when they issued you a bill of lading for shipments that leave on boats other than the boats owned by them.

A. As agent.

Q. Agent for what.

A. Agent for the wharf boat company.

Q. Do you mean the wharf boat company or the steamboat company.

Mr. Welman: I object to the question as suggestive.

[fol. 398] Q. It manifestly cannot be for the wharf boat company—do you mean, now, for the wharf boat company, or for the steamboat company that might take it.

A. The man on the wharf receives the freight for the steamboat company.

Mr. Welman: But whenever you took any shipments there, you got a bill of lading for that shipment, to go out from Evansville on some boat.

The Witness: Yes sir.

Mr. Welman: And when shipment was returned to you, it came to you under a bill of lading, as to which you were the consignee.

The Witness: Yes sir.

Q. And could you have done that without having paid wharfage, by the month to the Evansville and Bowling Green Packet Company.

A. No sir.

[fol. 399] Mr. Welman: In other words, that was just an additional charge for that transportation, was it not?

Mr. Kahn: I object to that.

The Court: He may answer.

The Witness: An additional charge was made to receive the goods on the wharf, and unload them, and reload them, and take them back to the factory.

Q. And that was goods which were to be sent out, or had been returned back—it was concerning those goods, was it not.

A. The charge of wharfage is for the privilege of shipping out goods.

Q. But you pay that in addition to the freight rate.
A. In addition to the freight, yes, as a privilege.
Q. And you are constant and large shippers.
A. Yes sir.
Q. You got a small rate for that additional charge?

The Court: Oh, well, the relationship is not affected by the size of the rate.
[fol. 400] The Witness: I might mention that the difference of charge varies with the amount of business that the shipper does over the wharf, and our business is mostly all rail, and, therefore, our tonnage is not large, and consequently the nominal charge.

Q. The larger your tonnage the more the freight.
A. Yes sir.

Mr. Welman: The more that you ship and the more that you get back from the wharf boat, the more the charge.
The Witness: Yes sir.

Q. The amount you pay when you are on a flat rate, is not dependent on the tonnage, is it.
A. No sir.

Mr. Welman: His flat rate is dependent on the tonnage.

Witness excused.

[fol. 401] HARRY RAFAEL, a witness called on behalf of the Respondents, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Kahn:

Q. Please state your name to the Court.
A. Harry Rafael.
Q. You live in Evansville and are an officer of Rafael Brothers Dry Goods Company.
A. Yes sir.
Q. Was your company one that had goods on this wharf boat, when it sank.
A. Yes sir.
Q. Did you have any arrangement with the Evansville and Bowling Green Packet Company for the use of its wharf boat.
A. Yes sir.
Q. What was that arrangement.
A. We had a flat charge of five dollars per month.
Q. In addition to that, when you shipped goods over the boats, you paid for the transportation.
[fol. 402] A. That was a separate charge.
Q. Was any of your merchandise lost, or damaged by the sinking.
A. Yes.

Q. You got it boack?
A. We haven't seen any of it.
Q. Did you get some of it back, in the first instance.
A. We got—a few days after the——

The Court: Did you get some of it back.
The witness: Yes sir.

Q. What did you do with it.
A. We took it in the basement and tried to salvage it, and——
Q. Did you offer it for sale.
A. We offered it for sale.
Q. Did you make your offer to Captain Jeff Williams, of the wharf boat company.
A. I did.
Q. State to the Court that conversation.

[fol. 403] The Court: Oh, no. Just the mere fact that he took it, is relevent.

Mr. Kahn: He didn't sell it. I wanted to bring out that it was sent back at the suggestion of Captain Williams.

The Witness: At the suggestion of Captain Williams, I got the best offer I could for the goods we had in the basement, and that happened to be fifty dollars, and I communicated that to Captain Williams when he came in the store, and he said "We won't take that offer. I can get more money for that if I take it and send it up to somebody on Green River," and I said it makes no difference to me if he could get more money, it was his salvage, and I was trying to get the biggest offer I could, and so we sent it back to Captain Williams.

Q. Did he direct you to send it back to him.
A. Yes sir.
Q. Have you seen the salvage since.
A. No sir.
Q. Or gotten any money from it.
[fol. 404] A. No sir.

Witness excused.

JOHN C. WALLACE, a witness being recalled on behalf of the Respondents, testified as follows:

Direct examination.

Questions by Mr. Kahn:

Q. Your name is John C. Wallace, I believe.
A. Yes sir.
Q. You were the night man on the boat at the time it sank.
A. Yes sir.
Q. And you went on duty at five o'clock on the evening of the thirteenth of May.

A. Yes sir.

Q. What time between that time and the time you went on duty, and before it sank, did you lower the wharf boat on the levee.

[fol. 405] A. Lower it?

Q. Yes.

A. What do you mean by that.

Q. Spar it out.

A. It didn't have to be sparred out. I didn't spar it out.

Q. What did you do about loosening the cables that night, so as to let it out—the moorings.

A. I never touched it.

Q. You never touched it.

A. No.

Q. On that night, were not the boats, the Joe Hart and Fall, the Hazel Rice, and the Southland, all either due or past due at Evansville.

A. All due?

Q. Yes, at the harbor in Evansville.

A. The Hart and Fall was due that night.

Q. How about the Hazel Rice.

A. She came in.

Q. What about the Southland.

A. She was on the ways at Paducah.

Q. Was any boat that was on her trip due that night.

[fol. 406] A. No sir.

Q. Was the Hart and Fall and the Hazel Rice, late on that trip.

A. The Hart and Hall didn't come there until Sunday morning, or about noon.

Q. But in the run she was due there on Saturday.

A. Yes sir.

Q. And the Hazel Rice was also due on Saturday before nightfall on that trip.

A. Yes sir.

Q. And the Day Queen, also.

A. Yes, sir, but she came in and stayed there until Monday. She got in about eight o'clock Saturday evening.

Q. Was she due before night on Saturday.

A. No sir.

Q. But freight for her was being accepted on the wharf boat on that Saturday, was it not.

A. No sir.

Q. No freight.

A. No sir.

Q. You are sure about that.

A. Yes sir.

[fol. 407] How was she going to get her freight.

A. She didn't leave there until Monday evening until five o'clock, my dear friend, but she was coming in on Saturday to lay there until Monday.

Cross-examination.

Questions by Mr. Darby:

Q. Why hadn't the wharf boat sparred out during the night.
A. There was no occasion for it.
Q. Why wasn't there any occasion for it.
A. Because she was setting free and easy, when I came on watch that night.
Q. And I believe that you testified, this morning, that it had been sparred out in the morning—Saturday morning.
A. Yes, on Saturday morning, and the river was falling very little.
Q. At the time of the sinking was the wharf boat the proper distance from the shore.
A. Yes sir.
[fol. 408] Q. And the spars were set.
A. Yes sir.

Redirect examination.

Questions by Mr. Kahn:

Q. What time did you spar it out, Saturday morning.
A. We sparred out Saturday morning about eight o'clock.
Q. What time did you go on duty that night.
A. I come on duty at five o'clock.
Q. And worked until when.
A. Seven o'clock in the morning.
Q. And it was sparred out after you left.
A. Saturday morning?
Q. Yes.
A. No, I was down there that morning.
Q. You helped spar it out at eight o'clock Saturday morning.
A. I didn't help spar it out, but my partner did—the day man—but I was there.
Q. What was his name.
A. Gus Kuntz.
Q. He is not here to-day, is he.
[fol. 409] A. No sir.
Q. He is an employee of your company.
A. Yes sir.
Q. He was then, and still is.
A. Yes sir.

Witness excused.

Mr. Kahn: We offer in evidence the Interrogatories and the Answers thereto. We would like to have the record show that they are introduced as part of the evidence, now.

The Court: They may be admitted.

The said Interrogatories, and Answers thereto, so offered, were admitted and read in evidence, were marked respectively, "Exhibit A," and, "Exhibit B," and the same are in the words and figures following, to-wit:

[fol. 410] [Title omitted]

INTERROGATORIES PROPOUNDED BY RESPONDENTS TO BE ANSWERED UNDER OATH BY PETITIONER

To the Honorable Albert B. Anderson, Judge of said Court:

The respondents Chero Cola Bottling Company, National Produce Company, Raphael Bros. Dry Goods Company, U. S. Furniture Company, Red Spot Paint & Varnish Company, Evansville Metal Bed Company, Indiana Board & Filler Company, R. & G. Furniture Company, The Ichenhauser Company, Boonville Milling Company, John G. Neumann Company, Diamond Mills, Indiana Furniture Company, Purcell Seed Company, A. Bromm & Company, Torian Bros. Company, Globe Bosse World Furniture Company, Chas. Leich & Company, Ziliak & Schafer Milling Company, L. M. Baird's Sons, Southwestern Broom Manufacturing Company, Universal Furniture Company, Ideal Dairy Company, Edw. F. Goeke Company, Creasey Corporation, Vickery Bros., Chas. W. Brizius Company, Karges Wagon Company, Evansville Packing Company, Wm. Blackman Floral Company, C. Graulich & Company, Klamer Factories, Inc., S. Kahn's Sons, Parsons & Scoville Company, Midland Furniture Company, Lensing Bros., Evansville Malt Company, Sunnyside Flour Mills, [fol. 411] Anchor Supply Company, Hercules Corporation, Small & Schelosky Company, Liberty Furniture Company, Neitert Produce Company, Ohio Valley Roofing Company, Bement & Seitz Company, Ragan Bros., Orr Iron Company, The Heldt Company, Davidson-Dietrich Plow Company, S. Moskiwitz Company, Mrs. M. J. Willett, Thomas M. Hansberger, The George Delker Company, Delker Bros. Buggy Company file with their answer to the petition hereto and submit their interrogatories numbered from one (1) to twenty-six (26) inclusive and ask that the petitioner through its officers be required to answer the same under oath within such time as may be fixed by the court.

Interrogatories

1. When, where and by whom was the Evansville Wharfboat constructed?

2. Was it built by your company, and if not, where, when and from whom did your company purchase it?

3. What are the dimensions of the hull of said wharfboat?

4. What was her carrying capacity in tonnage at the time she sank, May 14, 1922.

5. What amount of goods and merchandise in tonnage did she have on board at the time she sank?

6. If the petitioner purchased the wharfboat, how many years had it been built at the time of the purchase?

[fol. 412] 7. When, where, and by whom was the said wharfboat last placed on ways or in a dry dock for repairs to her hull prior to the sinking on May 14, 1922?

8. How often and at what times and places, if any, has this boat been put on the ways or in dry docks for repairs to the hull since the petitioner has owned it?

9. What was the nature and extent of the repairs to the hull of this boat the last time it was placed on the ways or in the dry dock prior to her sinking on May 14, 1922?

10. Was the hull of this wharfboat repaired at any time by the petitioner without placing the boat on the ways or in a dry dock? If the answer to the last question is in the affirmative, state in detail the nature and extent of any such repairs and the times when the same were made.

11. If any such repairs were made to the hull, state what kind of material was used in such repairs and how the same was applied.

12. State of what kind of material the hull of the boat was constructed, and the thickness thereof.

13. How long had the timber or other material constituting the side of the hull where the leak occurred at the time of the sinking been in use, and if it was of timber, state what kind of timber?

[fol. 413] 14. With how many pumps for the purpose of pumping water from the hull, was the wharfboat equipped at the time of the sinking?

15. Give the size, dimensions and capacity of the pump or pumps with which the boat was equipped at the time of the sinking.

16. With what kind of power were the pumps operated at the time of the sinking? and in what condition of repairs were the pumps and the equipment for furnishing power for pumping, at the time of the sinking?

17. How many employees of the petitioner were on the wharfboat and in charge of her during the night she sank?

18. How many men were employed by the petitioner to have charge of and operate the wharfboat whether during the day or the night for the period immediately preceding the time of the sinking?

19. At what time during the night or the evening preceding the sinking of the boat did any of the employees of the petitioner first learn she was leaking?

20. How long was it from the time the leak was first discovered until the boat sank?

21. What, if any offer was made to operate the pump or pumps in an effort to prevent the sinking of the boat?

[fol. 414] 22. Was any call made upon any steamboat, tugs or other vessel in the vicinity for assistance during the night of the sinking?

23. Did any officer of the petitioner corporation give his personal time and attention to any extent to superintending the business of the company on the wharf-boat prior to the time of the sinking?

24. If the foregoing interrogatory is answered in the affirmative,

state in detail, the extent and nature of the supervision so given by any such officer, stating also the office which he held in the petitioner company.

25. If any such officer of the petitioner corporation gave personal attention to the business of the wharfboat, state whether or not he was on the boat at the time of the sinking and if not, how long prior to the time of the sinking, was he on or about the wharfboat?

26. Had this wharfboat ever been declined as a risk for marine insurance prior to the time of such sinking? If so, how many times and when was she declined?

Paul H. Schmidt, Isidor Kahn, Proctors for Respondents.

[fol. 415] [Title omitted]

ANSWERS TO INTERROGATORIES

The undersigned Evansville and Bowling Green Packet Company, petitioner herein, files herewith its answer to the interrogatories which have been propounded by respondents and which were filed in this proceeding on the 20th day of June, 1923.

Answer to Interrogatory 1. There is no one connected with the Evansville and Bowling Green Packet Company who knows when, where or by whom the Evansville Wharfboat was constructed. We have made diligent effort to ascertain this information, but have failed.

Answer to Interrogatory 2. The wharfboat was not built by the Evansville and Bowling Green Packet Company. Our Company purchased it from the Louisville & Evansville Transportation Company in the Spring of the year 1915.

Anwer to Interrogatory 3. The dimensions of the hull of the wharf boat are as follows: 243 feet long, 48 feet wide and six feet deep.

[fol. 416] Answer to Interrogatory 4. The wharfboat at the time of the sinking on May 14, 1922 had a carrying capacity in tonnage of 758.16 tons.

Answer to Interrogatory 5. The wharfboat had on board at the time of the sinking, tonnage of goods nad merchandise to the amount of 299,857 pounds. This is the total of weights shown in bills of lading issued.

Answer to Interrogatory 6. Do not know.

Answer to Interrogatory 7. The wharfboat was placed on the Madison, Indiana Marine Ways by the Louisville & Evansville Transportation Company for general repairs to the hull in the year of 1910.

Answer to Interrogatory 8. Since the wharfboat was purchased by our Company in 1915 it has not been put on the ways or in dry docks for repairs to the hull except in 1922 after the sinking on May 14th, 1922.

Answer to Interrogatory 9. The Madison Marine Ways gave the

hull a general overhauling replacing all defective parts with new material of white oak in the year of 1910.

Answer to Interrogatory 10. During the summer of 1916 this Company repaired defective parts in the siding and reinforced the frame work necessary and thoroughly caulked the hull from light water line, and each year thereafter we made such repairs as were considered necessary. During the year of 1921 we had unusually [fol. 417] high winds and during the summer we concreted the knuckle and siding up to light water line all the way around the hull of the wharfboat in order to make the boat more rigid and safer during rough weather.

Answer to Interrogatory 11. Repairs to any defective parts were replaced with new material or wood. The concrete was a rich mixture of cement and sand and poured into a form built around the side and the knuckle of the hull.

Answer to Interrogatory 12. The bottom and sides up to the light water line were built of white oak of a thickness of four inches and from light water line up the thickness was t-ree and one-half inches of white oak. There are five kelsons fore and aft running full length of the wharfboat. The center kelson is six inches thick and the other four are five inches thick. The top and floor timbers are size four by eight.

Answer to Interrogatory 13. We cannot state how long all of the material constituting the sides of the hull had been in use, but any defective parts had been replaced with new material of white oak from year to year.

Answer to Interrogatory 14. Three pumps.

Answer to Interrogatory 15. One two inch suction pump with a [fol. 418] one and one-half inch discharge of about seventy to eighty gallons per minute; one two and one-half inch suction pump with two inch discharge of about eighty to one hundred gallons per minute when working under full capacity; one plunger pump with a two inch suction and one and one-half inch discharge of seventy to ninety gallons per minute.

Answer to Interrogatory 16. The two centrifugal pumps were operated by gasoline engines; and the plunger pump was operated by electric motor. The three pumps and the equipment for furnishing power for pumping were in a reasonably good condition of repair at the time of the sinking of the wharfboat.

Answer to Interrogatory 17. During the night that the wharfboat sank about ten employees were on the wharfboat at various times. One of these employees was in charge of the wharfboat during the night of the sinking.

Answer to Interrogatory 18. During the period immediately preceding the sinking of the wharfboat the petitioner employed two men to have charge of and operate the wharfboat during the day and employed one man to have charge of and operate the wharfboat during the night.

Answer to Interrogatory 19. About three o'clock a. m. May 14, 1922.

[fol. 419] Answer to Interrogatory 20. About two hours.

Answer to Interrogatory 21. The two pumps on the lower end, where the water was discovered, were immediately put in operation.

Answer to Interrogatory 22. Yes.

Answer to Interrogatory 23. Yes.

Answer to Interrogatory 24. The superintendent of the petitioner looked after the general physical condition of the wharfboat from time to time and superintended the repairs. The general agent of the petitioner looked after the general management of the business transacted on the wharfboat; and during the absence of the superintendent he also looked after the repairs.

Answer to Interrogatory 25. The general agent of the petitioner was on the wharfboat throughout the day of May 12th, 1922, but was out of the city until 7.00 A. M. on May 14th, 1922. The Superintendent had been out of the city but returned about 1.00 A. M. on May 14th, 1922 and was called from his home at 4.00 A. M. on that date. He was on the wharfboat about forty-five minutes before it finally sank.

Answer to Interrogatory 26. No.

Evansville and Bowling Green Packet Company, by Jeff Williams, General Agent.

[fol. 420] State of Indiana,
Vanderburg County, ss:

Jeff Williams being duly sworn upon his oath states that he — and has been for more than ten years last past the general agent of the Evansville and Bowling Green Packet Company, and that he has made the foregoing answers to interrogatories for and on behalf of said Company; that said answers are true and correct as he verily believes.

Jeff Williams.

Subscribed and sworn to before me this 30th day of June, 1923. My commission expires May 24th, 1926. Ruth C. Barnett, Notary Public. (Seal.)

[fol. 421] Mr. Kahn: We are through, your Honor, with this exception. We understand the practice to be that the question on the claims, themselves, is not now involved. That is to say, your Honor will first pass upon the question of either the total exemption, or the limitation of liability, and that it is not necessary, at this time, for us to go into our case—that that will come upon the trial and hearing of the exceptions to the Commissioner's Report, or when it comes on for confirmation.

That is our idea of it, and that is what we are planning to do.

Now, if your Honor——

The Court: Is that your idea of it?

Mr. Darby: We think, your Honor, that this is a full submission, and, of course, if our claim for total exemption is sustained, that ends the case. If the claim of total exemption is not sustained, but the

limitation of liability is sustained, then, if necessary, the Court refers the matter of the claim to the Commissioner again. If not, the prima [fol. 422] facie case made by the filing of the sworn claim, is approved, and the claims are shown to be allowed.

Mr. Kahn: On the other hand, the converse of that proposition is also true. If their petition for total exemption is denied, and their petition for limitation of liability is also denied, of course, manifestly, it is not necessary to go into the claim, at all, and that is the end of this jurisdiction, as I understand it. So, reasoning along that line, we came to the conclusion, owing to what we saw in Foster, that that is all there is to this trial, until these questions are determined, and then——

The Court: Were these claims all filed with the Commissioner?

Mr. Kahn: Yes, your Honor.

The Court: What did he do with them?

Mr. Kahn: They are all here.

The Court: What did he do, except to send them up here?

Mr. Kahn: He passed on their sufficiency, and the amounts, and in two cases exceptions were filed, and in this case exceptions were filed here.

[fol. 423] The Court: Why isn't the whole matter here, now?

Mr. Welman: It is, your Honor.

Mr. Kahn: Only this, your Honor—here are exceptions to this Commissioner's report, filed two or three days ago, raising an issue of law on the bill of lading, which is not in the petition, at all.

The Court: I will hear you tomorrow morning, on the question of law. Are you through with the evidence?

Mr. Welman: Yes, your Honor.

Mr. Kahn: Yes, we are through, your Honor.

Whereupon the hearing was concluded.

[fols. 424 & 425] In United States District Court

Judge's Certificate to Transcript of Evidence

This is to certify that the petitioner herein, The Evansville and Bowling Green Packet Company, has this day tendered to the Court the foregoing typewritten transcript of the testimony of all the witnesses together with the original exhibits given in evidence at the final hearing of this cause in this court at the City of Indianapolis on the 28th day of February, 1924, and asks that the same be made a part of the record in this cause.

And the Court having duly examined the same now finds that the foregoing transcript of testimony is correct in every particular and that said testimony together with the exhibits numbered 1, 2 and 3 was all the evidence adduced at said final hearing, and that the same should be filed and made a part of the record in this cause, all of which is now accordingly done this 26 day of June, 1924.

Albert B. Anderson, Judge of the District Court of the United States for the District of Indiana.

[fol. 426] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR RECORD—Filed June 13, 1924.

To the Clerk of the Above Entitled Court:

You will please prepare a transcript of the record in this cause to be filed in the office of the Clerk of the Supreme Court of the United States under and pursuant to the appeal heretofore allowed and include in said transcript the following pleadings, proceedings and papers on file, to wit:—

1. Petition of The Evansville and Bowling Green Packet Company for exemption from and limitation of liability as Owner of the Evansville Wharfboat.
2. Order of court appointing Commissioner to ascertain value of Wharfboat.
3. The report of the Commissioner fixing the value of the wharfboat.
4. Order of court approving Commissioner's report.
5. Written exceptions filed by Boetticher & Kellogg Company.
6. Written exceptions field by The Heldt Company.
7. Written exceptions filed by the Chero Cola Bottling Company and other claimants.
8. Order of court overruling all exceptions.
9. Answer of Boetticher & Kellogg Company.
10. Answer of The Heldt Company.
11. Answer of Chero Cola Bottling Company and other claimants.

[fol. 427] 12. Order of court appointing Commissioner to receive proof of claims.

13. Report of Commissioner showing number and amount of claims filed.
14. Petitioner's written exceptions to Commissioner's report.
15. Order book entry showing hearing on February 28, 1924.
16. The evidence heard by the court upon the final hearing.
17. Written opinion of District Court.
18. Final decree.
19. Order of court showing filing of petition for appeal, assignment of errors, notice of appeal and appeal bond and certificate of judge on question of jurisdiction, also allowing the appeal, restraining the prosecution of suits on claims and approving indemnifying bond.
20. Petition for appeal.
21. Assignment of errors.
22. Notice of appeal.
23. Appeal bond.
24. Idemnifying bond.
25. Original of citation and admission of service.
26. Præcipe for transcript of record.
27. Clerk's certificate to transcript of record.

Said transcript to be prepared as required by law and the rules of the Supreme Court of the United States.

The Evansville and Bowling Green Packet Company, by Welman and Darby, its Proctors.

[fols. 428 & 429] ACKNOWLEDGMENT OF SERVICE

We, the undersigned, Proctors who represent all of the respondents and claimants in the above entitled cause, hereby acknowledge receipt and service of a copy of the foregoing Præcipe this 20th day of June, 1924.

James T. Cutler, Paul H. Schmidt, Isidor Kahn, Joseph H. Iglehart, Proctors for Respondents.

[fol. 430] CITATION—In usual form, showing service on James T. Cutler et al., filed June 26, 1924; omitted in printing

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[fol. 431] IN UNITED STATES DISTRICT COURT

CLERK'S CERTIFICATE

I, William P. Kappes, Clerk of the District Court of the United States for the District of Indiana, do hereby certify the above and foregoing to be a true and complete transcript of all proceedings, documents and records, prepared and made by me in accordance with the præcipe filed in the cause entitled "In the Matter of the Petition of the Evansville and Bowling Green Packet Company for Exemption from and Limitation of its Liability as Owner of the Evansville Wharfboat," No. 8377, as the same appears from the original records and files thereof now remaining in my custody and control, and also the original citation herein filed and the written admission of service thereof.

Witness my hand and the Seal of said Court, this fifth day of July, 1924.

William P. Kappes, Clerk. District Court of the United States, District of Indiana.

[fol. 432] IN THE SUPREME COURT OF THE UNITED STATES

STATEMENT BY APPELLANT'S OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed July 21, 1924

The appellant by Welman & Darby, its proctors, presents and files with the Clerk of this Court the following statement of the points

upon which it intends to rely in the above cause and of the parts of the record which appellant thinks necessary for the consideration thereof, with proof of service of the same upon the adverse party.

A statement of the points upon which appellant intends to rely is as follows, namely:

First. The court erred in holding that it had no jurisdiction of the subject matter of this cause.

Second. The court erred in entering a decree dismissing this cause for want of jurisdiction of the subject matter thereof.

Third. The court erred in failing and refusing to hold and find that the Evansville Wharfboat at the time of the sinking thereof on the 14th day of May, 1922, was a vessel within the maritime law.

Fourth. The court erred in failing and refusing to hold and find that the Evansville Wharfboat at the time of the sinking thereof on the 14th day of May, 1922, was a vessel within the meaning and application of the Limitation of Liability Act of Congress, approved March 3rd, 1851, and the Acts of Congress amendatory thereof and supplemental thereto.

[fol. 433] Fifth. The court, having previously overruled respondents' exceptions to the petition herein, erred in failing and refusing to hold and find upon the evidence submitted at the final hearing that the Evansville Wharfboat at the time of the sinking thereof on the 14th day of May, 1922, was a vessel within the maritime law and within the meaning and application of the Limitation of Liability Act of Congress, approved March 3rd, 1851, and the Acts of Congress amendatory thereof and supplemental thereto.

Sixth. The court erred in failing and refusing to render a decree in favor of the petitioner exempting said petitioner from all liability on account of the claims of the respondents herein.

Seventh. The court erred in failing and refusing to render a decree in favor of the petitioner herein entitling said petitioner (if adjudged liable to the claimants herein) to a limitation of its total liability to the amount found to be the value of the Evansville Wharfboat immediately after the sinking thereof on the 14th day of May, 1922, namely, the sum of $2,012.00.

Eighth. The court erred in holding and finding that the wharfboat in question was not a vessel within the maritime law, or within the Limitation of Liability Act of Congress, approved March 3rd, 1851, and the Acts of Congress amendatory thereof and supplemental thereto, and in dismissing this cause and petition for that reason.

Ninth. The court erred in holding that it was without jurisdiction to grant to the petitioner the relief or any of the relief prayed for in the petition.

Tenth. The court erred in holding that the evidence heard at the final hearing of this cause did not show any right in the petitioner to

limit its liability under the provisions of the laws of the United States.

Eleventh. The court erred generally in its decision against the petitioner.

A statement of the parts of the record which appellant thinks necessary for the consideration of the foregoing points and the pages at which they appear in the typewritten transcript of record, and which parts of the record should be printed, is as follows:—

	Page of typewritten transcript
Placita	1
Entry of filing of Petition for limitation of Liability and appointment of Commissioner to ascertain value of Wharfboat	1– 2
[fol. 434] Petition for Limitation of Liability	3– 8
Report of Commissioner on value of Wharfboat	9– 11
Court order approving Commissioner's Report as to value and directing issuance of a Monition and appointing Commissioner to take proof of claims	53– 55
Written Exceptions filed by Chero Cola Bottling Company and others	56– 59
Written Exceptions filed by Boetticher & Kellogg Company	60– 63
Written Exceptions filed by The Heldt Company	64– 66
Court Order overruling all exceptions to Petition	67– 68
Answer filed by Chero Cola Bottling Company and others	70– 80
Answer filed by Boetticher & Kellogg Company	81– 90
Answer filed by The Heldt Company	91–100
Report of Commissioner filed January 5, 1924, as to claims filed	101–105
Written Exceptions filed by Petitioner to Commissioner's Report	120–121
Partial Hearing by Court on February 28, 1924	122
Final Decree	123
Court Order allowing Appeal, approving appeal bond and continuing order restraining suits on claims	124–125
Petition for Appeal	126
Assignment of Errors	127–128
Notice of Appeal	129–130
Appeal Bond	131
Indemnifying Bond	132
[fol. 435] Certificate of District Judge certifying question Jurisdiction to U. S. Supreme Court	133
Opinion of District Judge attached with Certificate	134–135
Transcript of Evidence as approved by Court	136–423
Certificate of District Judge approving transcript of evidence	424
Præcipe for Transcript	425–428

	Page of typewritten transcript
Original Citation signed by District Judge and admission of service	429–430
Clerk's Certificate to Transcript	431

The appellant thinks that various parts of the typewritten transcript of record are not material to the consideration of the points and errors upon which appellant intends to rely in this cause, and that consequently the following parts of the typewritten transcript of record should not be printed by the Clerk, but should be omitted from the printed record:—

	Page of typewritten transcript
Testimony of Walter W. Leiter appended with Commissioner's Report	12– 15
Testimony of S. C. Hornbrook appended with Commissioner's Report	16– 24
Testimony of John Archbold appended with Commissioner's Report	25– 30
Testimony of D. G. Morris appended with Commissioner's Report	31– 34
Testimony of Jeff Williams appended with Commissioner's Report	35– 48
Testimony of Homer McDonald appended with Commissioner's Report	49– 52
[fol. 436] Copy of Court Order directing monition, which copy was attached with Commissioner's Report filed January 5, 1924	107–109
Copy of Court Order extending time for filing certain claims, which copy was attached with Commissioner's Report filed January 5, 1924	110–111
Approval of Claimants' bond by Commissioner	112–113
Claimants' bond for costs which was attached with Commissioner's Report	114–119

Respectfully submitted, The Evansville and Bowling Green Packet Company (Appellant), by John D. Welman & Phelps F. Darby, It's Proctors.

[fol. 437] IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1924

No. 522

THE EVANSVILLE AND BOWLING GREEN PACKET COMPANY, Appellant,

vs.

CHERO COLA BOTTLING COMPANY, NATIONAL PRODUCE COMPANY, et al., Appellees

To Messrs. Isidor Kahn, Paul H. Schmidt, James T. Cutler, and Joseph H. Iglehart, Proctors for Appellees in above-entitled cause:

The undersigned appellant herewith serves upon the appellees in the above entitled cause by delivering to each of you a copy of the statement of points and errors upon which the appellant in the above entitled cause intends to rely and of the parts of the record which appellant thinks necessary for the consideration thereof and which parts of the record should be printed.

Dated this 19th day of July, 1924.

The Evansville and Bowling Green Packet Company, by John D. Welman & Phelps F. Darby, Its Proctors.

ACKNOWLEDGMENT OF SERVICE

Due service of the foregoing notice and of the statement therein referred to is hereby acknowledged by the appellees in the above entitled cause this 19th day of July, 1924.

Isidor Kahn, Paul H. Schmidt, James T. Cutler, Joseph H. Iglehart, Proctors for Appellees.

[fol. 438] [File endorsement omitted.]

Endorsed on cover: File No. 30,487. Indiana D. C. U. S. Term No. 522. The Evansville and Bowling Green Packet Company, appellant, vs. Chero Cola Bottling Company, National Produce Company, Raphael Brothers Dry Goods Company, et al. Filed July 7th, 1924. File No. 30,487.

CONTENTS

PAGE

Facts 2

Argument 4

POINTS:

I. The Evansville wharfboat was at the time she sank a "vessel" within the general admiralty and maritime jurisdiction of the United States and subject to the operation of the Limitation Act 5

II. The Evansville wharfboat was at the time she sank a "vessel" within the definite expression and clear contemplation of the Limitation of Liability Act 12

III. The Limitation of Liability Act should receive a liberal construction 21

IV. The United States District Court for the District of Indiana had jurisdiction to entertain the petition of the Evansville & Bowling Green Packet Company to limit its liability for the loss arising from the sinking of the Evansville wharfboat 23

AUTHORITIES

	PAGE
Aitcheson *vs.* Endless Chain Dredge, 40 Fed. 253	10
Alabama, The, 19 Fed. 544	10
Alabama, The, 22 Fed. 449	10
Atlantic, The, 53 Fed. 607	10
Barnes Co., Charles *vs.* One Dredge Boat, *et al.*, 169 Fed. 895	11, 20
Berton *v.* Tietjen & Lang Dry Dock Co., 219 Fed. 763	11
3 Black Book of the Admiralty, 103, 243, 345	5
Bowers Hydraulic Dredging Co. *vs.* Federal Contracting Co., 148 Fed. 290, 294	10
Butler *vs.* Boston and Savannah Steamship Co., 130 U. S. 527	6, 22
C. H. Northam, The, 181 Fed. 983	10, 19
Capitol Transportation Co. *vs.* Cambria Steel Co., 249 U. S. 334	22
City of Pittsburgh, The, 45 Fed. 699	10
Cope *v.* Vallette Dry Dock Co., 119 U. S. 625	11
Craig *v.* Continental Ins. Co., 141 U. S. 638	10, 18
Dick Keys, The, Fed. Cas. No. 3898	11
Disbrow *vs.* The Walsh Brothers, 36 Fed. 607	11
Eastern Steamship Corporation *vs.* Great Lakes Dredge & Dock Company, 256 Fed. 497; petition for certiorari dismissed, 250 U. S. 676	17
Easton, *Ex parte,* 95 U. S. 68	11
Endner *vs.* Greco, 3 Fed. 411	11
General Cass, The, Fed. Cas. No. 5307	11
George W. Elder, The, 196 Fed. 137	10

	PAGE
Hendrick Hudson, The, 3 Benedict 419	8
Hezekiah Baldwin, The, Fed. Cas. No. 6449	11
Hydraulic Steam Dredge No. 1, *In re*, 80 Fed. 545	10
International, The, 83 Fed. 840	10
3 Kent's Commentaries, 14th Ed., p. 356	5
Lawrence *vs.* Flat Boat, 84 Fed. 200, affirmed 86 Fed. 907	10
M. R. Brazos, The, Fed. Cas. No. 9898	10
Mackinaw, The, 165 Fed. 351	9
Mary, The, 123 Fed. 609, 612	10
McRae *vs.* Bowers Dredging Co., 86 Fed. 344	10
Old Natchez, The, 9 Fed. 476 (affirmed 9 Fed. 478)	6, 9
Patton-Tully Transportation Co. *vs.* Turner, 269 Fed. 334	20
Peoples Navigation Company, Inc. *vs.* Toxey, *et al.*, 269 Fed. 793	22
Pioneer, The, 30 Fed. 206	10
Providence & N. Y. S. S. Co. *vs.* Hill Mfg. Co., 109 U. S. 578	5, 21, 22
P. Sanford Ross, Inc., *In re*, 196 Fed. 921	20
Public Bath No. 13, The, 61 Fed. 692	9, 10
Robert W. Parsons, The, 191 U. S. 17	11
Saylor *vs.* Taylor, 77 Fed. 476	10
Scow No. 34, The, 138 Fed. 942	6, 11, 15
Seabrook *vs.* Raft of R. R. Cross Ties, 40 Fed. 596	9
Starbuck, The, 61 Fed. 502	10
Sunbeam, The, 195 Fed. 468	19
W. F. Brown, The, 46 Fed. 290	10
Wilmington, The, 48 Fed. 566	11

SUPREME COURT OF THE UNITED STATES

IN THE MATTER OF THE PETITION OF THE EVANSVILLE & BOWLING GREEN PACKET COMPANY, as owner of a wharfboat, for limitation of liability,

Petitioner, Appellant,

vs.

CHERO COLA BOTTLING COMPANY, NATIONAL PRODUCE COMPANY, RAPHAEL BROTHERS DRY GOODS COMPANY, *et al.*,

Claimants, Appellees.

October Term
1925
No. 127

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA

BRIEF FOR THE EVANSVILLE & BOWLING GREEN PACKET COMPANY, PETITIONER, APPELLANT

This is an appeal from a final decree of the District Court for the District of Indiana dated May 6, 1924, dismissing the petition of the Evansville & Bowling Green Packet Company, owner of a wharfboat, for limitation of its liability, for want of jurisdiction of the subject-matter (Record, p. 30). The cause comes before this Court upon a certificate from the District Court dated June 13, 1924, that the cause is one in which the jurisdiction of the District Court is in issue and certifies the question of jurisdiction alone to this Court for decision (Record, p. 34).

Jurisdiction turns upon whether the wharfboat, which sank, causing certain damage to cargo, was a "vessel" within the meaning of the Limitation of Liability Statute.

The sections of the statute applicable are as follows:

"The liability of the owner of any vessel, for any embezzlement, loss, or destruction, by any person, of any property, goods, or merchandise, shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity, or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner in such vessel and her freight then pending" (R. S. 4283).

In 1871, Congress defined the meaning of the word "vessel" as used in the statutes as follows:

"The word 'vessel' includes every description of water-craft or other artificial contrivance used, or capable of being used, as a means of transportation on water" (R. S. Section 3).

In 1886, Congress passed the amendment directing that the provisions of the Act, relating to limitation of liability of owners of vessels,

"shall apply to all seagoing vessels, and also to all vessels used on lakes or rivers or in inland navigation, including canal boats, barges, and lighters" (R. S. 4289).

Facts

The wharfboat in question had practically every attribute of a "vessel". The photographs in evidence show clearly that she was a "vessel" (Exhibits 1 and 2, Record, at p. 39). In short, she was a "square hull boat, 243 feet long and 48 feet wide". She had, as all vessels have, a hull, main deck, floor timbers, deck beams, cabin, forecastle, capstans, planks, seams, caulking, hog chains, bitts, spars, bulkheads, kelsons,

cavils, outriggers, stanchions, bilges, keel, electric and gasoline pumps, and she floated on the water (Record, pp. 36-38, 86-92, 74, 93, 119-120). With a draft of five feet, she had a cargo capacity of 1,469 tons (Record, p. 93).

She was built in 1884 at Jeffersonville for the Cotton Belt & Iron Mountain Road, and was used at Hopefield, Arkansas, on the Mississippi River (Record, p. 93). In 1901 the boat was towed to Madison, Indiana, where she was thoroughly renovated and overhauled (Record, pp. 85, 93). She was then towed to Louisville, Kentucky, and used there as a wharfboat for the Evansville and Louisville Packet Company. In 1910 she was again towed to Madison, where she was placed on the ways, overhauled and had her seams caulked (Record, pp. 85, 93). She was then towed to Evansville and always remaining afloat, was used as a wharfboat except in the winter time, when she was towed from Evansville to the ice harbor in Green River and towed back to Evansville in the spring.

At Evansville the wharfboat was moored to the bank of the Ohio River by four chains or cables with her inshore side about 25 feet out from the water's edge, and could be and was moved in and out with the changing stage of the river (Record, pp. 59, 75). She was constructed so as to float at all times in like manner as other vessels, was capable of being towed from place to place, and was equipped so as to enable steamboats to land or receive cargo at any stage of the river (Record, pp. 70, 74).

On May 14, 1922, while engaged as a wharfboat at Evansville, she settled on a log which splintered her bottom, causing her to take in water and sink, resulting in damage to and loss of cargo (Record, pp. 67, 79).

At the time she sank, the wharfboat was being used in

the interchange of traffic from steamboats to steamboats, from steamboats to rail lines, and in receiving local freight for outbound steamers, all of which comprised interstate business (Record, p. 77).

In spite of these facts, and although the learned Judge of the District Court referred to the wharfboat as a "barge" (Record, p. 97), the Court held that the boat was "not a vessel within the maritime law" and dismissed the petition for want of jurisdiction of the subject matter (Record, pp. 30, 35).

Argument

We shall argue that this wharfboat was not only a "vessel" within the general admiralty and maritime jurisdiction for all purposes of the determination of tort liability, but further that the boat was a "vessel" within the Limitation of Liability Act (R. S. 4283-9).

We shall show that upon a reasonable construction of the Limitation Act, as amended, the express wording includes this wharfboat, and that the Limitation Act has been held to cover floating structures which smack much less of "vessels" and which are patently much less useful in aid of inland navigation and commerce.

Finally we shall suggest the propriety of adherence to the broad and liberal construction of the Limitation Act which this Court has so often applied for the benefit of shipowners.

POINTS

I. THE EVANSVILLE WHARFBOAT WAS AT THE TIME SHE SANK A "VESSEL" WITHIN THE GENERAL ADMIRALTY AND MARITIME JURISDICTION OF THE UNITED STATES AND SUBJECT TO THE OPERATION OF THE LIMITATION ACT.

Limitation of a shipowner's liability was one of the ancient principles of the general maritime law. The "vessel" as far back as the Middle Ages was considered the source and also the limit of liability.

3 Kent's Commentaries, 14th Ed., p. 356;
3 Black Book of the Admiralty, pp. 103, 243, 345.

In England the jealousy with which the common law viewed the encroachments of admiralty for a long time cramped its jurisdiction. Consequently it was not until the Act of 7 George II, passed in 1734, that the rule in general acceptance elsewhere was introduced into the English admiralty system to even a partial extent.

Our Congress passed the original Limitation Act in 1851. Thus by legislation the admiralty and maritime jurisdiction of the United States was made to correspond with the principles of the general maritime law which had been in existence from early times.

As said by this Court in *Providence & N. Y. S. S. Co.* vs. *Hill Mfg. Co.*, 109 U. S. 578:

"The rule of limited liability prescribed by the act of 1851 is nothing more than the old maritime rule, administered in courts of admiralty in all countries except England, from time immemorial; and if this were not so, the subject matter itself is one that belongs to the department of maritime law" (p. 593).

And in *Butler* vs. *Boston and Savannah S. S. Co.,* 130 U. S. 527:

"whilst the general maritime law, with slight modifications, is accepted as law in this country, it is subject to such amendments as Congress may see fit to adopt. One of the modifications of the maritime law, as received here, was a rejection of the law of limited liability. We have rectified that. Congress has restored that article to our maritime code" (p. 556).

In the same case, in order to make clear the completeness with which Congress had incorporated the principle of limitation of liability into our general admiralty law, this Court said:

"It being clear, then, that the law of limited liability of shipowners is a part of our maritime code, the extent of its territorial operation (as before intimated) cannot be doubtful. It is necessarily co-extensive with that of the general admiralty and maritime jurisdiction, and that by the settled law of this country extends wherever public navigation extends—on the sea and the great inland lakes, and the navigable waters connecting therewith" (p. 557).

In *The Scow No. 34,* 138 Fed. 942, the court held that all craft which are vessels for the purposes of the maritime law are vessels within the intent of the Act (p. 944).

It becomes important, therefore, first to ascertain what kinds of craft are held to be "vessels" and subject to "general admiralty and maritime jurisdiction."

On numerous occasions the courts of the United States have been called upon to decide what is a "vessel", and have sanctioned jurisdiction in cases where the water craft concerned answered the description "vessel" much less than the wharfboat involved here.

In *The Old Natchez,* 9 Fed. 476 (affirmed 9 Fed. 478), a *wharfboat* was held to be a vessel within the general

admiralty jurisdiction. The *Natchez,* formerly a steamboat, was taken to Cincinnati, Ohio, in the summer of 1879, where she was dismantled and stripped of her boilers, engines and paddle wheels. Her cabin was stripped of its furniture, her smokestacks were taken down, and everything that could be made available in the construction of a new steamboat was taken off. There remained of the old boat only the hull, cabin, texas, hog chains running from stem to stern, fore and aft capstans, stair steps leading from the lower to the boiler decks, her boiler deck and hurricane roof. She was without motive power of any kind and remained moored at Cincinnati until the fall of 1880, when she was purchased and towed to Vicksburg, Mississippi, and moored to a landing about half a mile from the city.

The question of jurisdiction was raised upon a libel for salvage services rendered to the hull and outer construction which caught fire while undergoing alterations to fit her for use as a wharfboat on the Mississippi River. The District Court held that the *Natchez* was a "vessel" within the admiralty jurisdiction, and in so doing dilated upon the construction and use of wharfboats in general, saying:

"Wharfboats are buoyant upon the water, and fastened to the bank of the stream in such a manner as to form a communication between the land and the vessels loading or unloading, or receiving and landing passengers and freight, and are so constructed as to be capable of being removed from place to place so as to enable the vessels to land and receive their cargoes at any stage of the water, and in these respects are important aids to commerce and navigation, much more so than any kind of stationary wharf, and especially so on the Mississippi river, whose banks are so changeable. Therefore, being floated upon the water and movable and being in aid of commerce and navigation, I can see no reason why this kind of water craft should not be liable to a charge for salvage" (p. 477).

In the same case the Court held that it was not necessary that the vessel or structure should be at the time so employed, saying:

"If she was intended for such use it is sufficient, as held in the case of *The Cheeseman* v. *Two Ferry-boats*, 2 Bond, 363" (p. 477).

The Circuit Court, in affirming the decision of the District Court, emphasized what the Court below had already suggested, that whatever the use of the boat at the time of the accident, nevertheless she

"stood upon the same footing as any other barge moored to the bank of the river waiting to be loaded, towed away permanently, tied up, or broken up, as the business or interests of the owners might suggest or require" (p. 480).

The remarks of the Circuit Court with reference to the *Natchez* are peculiarly applicable to the wharfboat concerned here. The Court said:

"But it is not necessary, as the agreed facts in this case, as I have recited them, show that no matter what may have been the intention of her owners as to future use, the dismantled *Natchez* still retained all the characteristics and distinctive features of a water-craft, capable of being used in commerce and navigation, and she was afloat on waters over which the courts of the United States have admiralty jurisdiction. As such water craft she was insured by her owners. As a barge or lighter she may be in use to-day. As such water-craft she could be in impending peril on a public, navigable river, and could be rescued from such peril by maritime service" (pp. 479-480).

Both the District Court and Circuit Court clearly distinguished *The Hendrick Hudson*, 3 Benedict 419. There an old steamboat had been transformed into a "saloon and hotel." It was firmly resting upon the river bottom, and it

was in no way being used in aid of commerce or navigation. As the Circuit Court said:

"*The Hendrick Hudson* was aground, destined to continue so, and she had been converted into and used as a 'saloon and hotel', and she was only to be floated so as to reach a more eligible location. She was no more subject to admiralty jurisdiction than would be a hotel on a wharf" (p. 479).

In short, transformation into a non-maritime use had withdrawn what was once a vessel from the admiralty jurisdiction.

In *The Public Bath No. 13*, 61 Fed. 692, jurisdiction was conferred in the case of a bath house. The bath house was built upon several boats as a sub-structure. The boats were designed to float and to uphold and transport the bath house wherever and whenever desired. There was no pretense of using the structure in commerce as in the case of the wharfboat before this Court.

In *The Mackinaw*, 165 Fed. 351, a pontoon, which floated in the stream between high and low water marks, rising and falling with the tide and permanently moored to the shore by cables, used as an approach to a ferryboat, was held to be within the general admiralty and maritime jurisdiction. The case involved jurisdiction over an action for personal injury occurring on the pontoon.

In brief, various craft and structures have been held to be "vessels" and within the admiralty and maritime jurisdiction in the following cases:

1. Wharfboat. *The Old Natchez, supra.*

2. Raft of cross ties. *Seabrook* vs. *Raft of R. R. Cross Ties*, 40 Fed. 596, where the court said:

"The first vessels were rafts. The raft is the parent of the modern ship" (p. 598).

3. Raft of logs. *The Mary,* 123 Fed. 609, 612.

4. Bath house. *The Public Bath No. 13, supra; The M. R. Brazos,* Fed. Cas. No. 9898.

5. A flat boat with a pile driver and its engine erected thereon. *Lawrence* vs. *Flat Boat,* 84 Fed. 200, affirmed 86 Fed. 907.

6. Dismantled steamboat. *The City of Pittsburgh* (D. C.) 45 Fed. 699; *The C. H. Northam* (D. C. Mass.) 181 Fed. 983.

7. Dredgeboats. *The Alabama* (D. C.) 19 Fed. 544; *The Alabama* (C. C.) 22 Fed. 449; *The Pioneer* (D. C.) 30 Fed. 206; *Aitcheson* vs. *The Endless Chain Dredge* (D. C.) 40 Fed. 253; *The Atlantic* (D. C.) 53 Fed. 607; *The Starbuck* (D. C.) 61 Fed. 502; *Saylor* vs. *Taylor* (C. C. A.) 77 Fed. 476; *The International* (D. C.) 83 Fed. 840; *McRae* vs. *Bowers Dredging Co.* (C. C.) 86 Fed. 344.

8. Hydraulic steam dredge, operating afloat, by sucking up material from the bottom and discharging it through adjustable pipes on adjacent land. *Bowers Hydraulic Dredging Co.* vs. *Federal Contracting Co.* (D. C.) 148 Fed. 290, 294. See also *In re Hydraulic Steam Dredge No. 1* (C. C. A.), 80 Fed. 545.

9. Floating circus. *The W. F. Brown* (D. C.) 46 Fed. 290.

10. A hull, wrecked and abandoned by her owners and underwriters and her registry cancelled. *The George W. Elder,* 196 Fed. 137.

11. A wreck kept afloat by steam pumps and capable of navigation only by being towed. *Craig* vs. *Continental Insurance Co.,* 141 U. S. 638.

12. A canal boat upon which had been built an elevating apparatus for hoisting grain. *The Hezekiah Baldwin*, Fed. Cas. No. 6449.

13. Scow. *The General Cass*, Fed. Cas. No. 5307; *Endner* vs. *Greco* (D. C.) 3 Fed. 411.

14. Barge. *Ex parte Easton*, 95 U. S. 68; *The Dick Keys*, Fed. Cas. No. 3898; *Disbrow* vs. *The Walsh Brothers* (D. C.) 36 Fed. 607; *The Wilmington* (D. C.) 48 Fed. 566.

The distinction between a wharfboat and such structures as dry docks, projecting non-floating wharves and hospitals, depends upon whether the subject partakes more of a nautical nature or of the nature of the land.

Dry docks are defined as part of the land in *The Robert W. Parsons*, 191 U. S. 17.

Cope v. *Vallette Dry Dock Co.*, 119 U. S. 625, involved a floating dry dock, which was a fixed structure and not designed for navigation. As this Court said:

"A fixed structure, such as this dry dock, is not used for the purpose of navigation, is not a subject of salvage service, any more than is a wharf or a warehouse when projecting into or upon the water. The fact that it floats on the water does not make it a ship or vessel, and no structure that is not a ship or vessel is a subject of salvage" (p. 627).

Berton v. *Tietjen & Lang Dry Dock Co.*, 219 Fed. 763, was also a case involving a dry dock and for the same reasons held to be not within the statutory definition of the word "vessel" (p. 771).

The distinction is well brought out by a lengthy review of the cases in *The Scow No. 34, supra*, and in *Charles Barnes Co.* vs. *One Dredge Boat, et al.*, 169 Fed. 895.

II. THE EVANSVILLE WHARFBOAT WAS AT THE TIME SHE SANK A "VESSEL" WITHIN THE DEFINITE EXPRESSION AND CLEAR CONTEMPLATION OF THE LIMITATION OF LIABILITY ACT.

In the original Limitation Act of 1851 there is no doubt that a wharfboat was outside the legislative intendment. The section then read:

"* * * shall not apply to the owners of any canal boat, barge, or lighter, or to any vessel of any description whatsoever used in rivers or inland navigation."

So the law stood, until 1886, when the Limitation Act was amended to read in part:

"* * * relating to the limitations of the liability of the owners of vessels, shall apply to all seagoing vessels, and also to all vessels used on lakes or rivers or in inland navigation, including canal-boats, barges, and lighters" (R. S. 4289).

This amendment reflects the purpose of Congress to widen the effectiveness of the Act and to confer its benefits both of substance and procedure to boats of all kinds and descriptions employed by shipowners in aid of navigation on inland waterways. In the mind of Congress was implanted the sound notion that it was not wise to lend legislative aid to American ocean going shipping interests and exclude from that benevolence the extensive, active and potential shipping interests engaged in trade and commerce on our rivers and lakes.

In order to confer fully the benefits of the statute on those financially interested in inland commerce by water it was necessary to keep constantly in mind the variety of watercraft actually employed by ship proprietors in commerce and trade on inland waters. Obviously to allow limitation to owners of ocean going vessels alone would be but partially

efficacious. Accordingly, Congress with much reason and good judgment sought to word the amendment so that *all* watercraft used in the aid of transportation and trade should be entitled to the benefits of the Limitation Act. The wording of the amended Act shows the thoroughness of that endeavor.

It would seem that this wharfboat should be considered a "barge" or "lighter" in view of the details of her construction brought out in the record (this brief, pp. 2-4).

A lighter is defined by Webster as

"a boat or vessel, commonly an open flat-bottomed barge, but sometimes decked, used in lightening or unloading and also in loading ships, * * *."

The owner of the wharfboat was the owner of a steamboat line, in conjunction with which the wharfboat was in intimate and constant use. The main purpose of the wharfboat was to load and unload cargo from steamer to pier, or from steamer to steamer (Record, pp. 74-76).

A barge is defined by Webster as "a double decked vessel towed by a tug or steamboat."

The wharfboat was built to be and had been towed from Jeffersonville to Hopefield, Arkansas, thence to Madison, Indiana, to Louisville, Kentucky, and back again to Madison, and thence to Evansville. Subsequently every winter she was towed from Evansville to the ice harbor in Green River and return (Record, pp. 70, 75, 85, 93).

That the boat was a "vessel" as much as thousands of other floating structures, and subject to all the dangers and vicissitudes of water-born craft to which the Limitation Act was intended to apply, is clearly apparent from an excerpt from the record wherein both Court and counsel for appellees refer to the wharfboat as a "barge," as follows:

"The Court: * * * The issue at this particular point is this: If the river receded, and in that way lowered the *barge,*

and the *barge* rested upon an unknown substance down there, which bulged a hole in it—the question is, did that happen? Or, was this *barge* so leaky that it sank anyhow? That is the issue, isn't it?

Mr. Kahn: Yes, your Honor, but there is one pertinent question——

The Court: Well, I say, that is the issue. You claim that this *barge* was leaky and didn't have pumps enough on it, and there wasn't anything right about it, and it sank because of the fact that it wasn't made right and wasn't kept in order, and wasn't in good condition at the time. That is your contention.

Mr. Kahn: And that it wasn't properly managed, and it was on account of their negligence and carelessness that the *barge* sank. It was negligence that was then within their knowledge, and because of that, the *barge* sank.

The Court: Of course they knew the *barge* sank. Is that what you mean?

Mr. Kahn: No, the contributing cause——

The Court: You mean that they should have known that it was in that condition?

Mr. Kahn: Yes, your Honor.

The Court: So that the issue here is. What caused this *barge* to sink? Did it sink because it got leaky, and water seeped in and it went down? Or did it leak because—of course it settled down on this log and bulged up the bottom. I suppose there is no doubt about that. Now, the question, then, is, What caused this *boat* to go down? If it was the lowering of the water, it was one thing. If it was because it leaked anyhow, and the lowering of the water had nothing to do with it, that is another thing. That is the question we are getting at now.

Mr. Kahn: Or, if it was overloaded.

The Court: So, therefore, what difference does it make whether it might have got off the log if they had let it out a little further? Nobody knew the log was there.

Mr. Schmidt: If they had seams above the lightwater line, and it was suddenly overloaded——

The Court: There is no evidence that it was heavily overloaded.

Mr. Schmidt: Well, you haven't heard our case yet.

The Court: But what has this cross-examination got to do with that issue? Nothing in the world.

Questions by Mr. Kahn:

Q. Would the falling river have permitted this boat to have settled on this log, without the lowering of the chains or the loosening of the chains, spars and moorings.

A. Yes sir.

Q. Without the slackening of them.

A. Yes sir, it would have lodged on that log, and the river falling would have punched a hole right through the bottom of the boat.

The Court: Why, of course. I know that, myself, and I was born and brought up here in Boone County. The question is, What caused the boat to go down? If it was the falling of the river, that is one thing. If it was due to the leaky condition of the *barge*, that is another thing. But if the lowering of that *barge* caused the bulging up of the floor—there don't seem to be any question about that" (Record, pp. 96-7; italics ours).

If distinguishable from the "lighter" or "barge" class, a wharfboat is nevertheless included under the plain statement of Congress that "all vessels used on lakes and rivers" shall be subject to limitation proceedings. The Act does not mean to specify or enumerate "canalboats, barges and lighters" as the three, and the only three, kinds of craft used in inland navigation to which the Statute shall be applicable. A reference to the specific exclusion of these three classes in the original Limitation Act completely explains their enumeration in the amendment (Act of 1886, R. S. 4289).

In *The Scow No. 34, supra*, the question of jurisdiction was raised upon a petition for limitation of liability by the owner of a mud scow. The Court held that it had jurisdiction, and that the scow, although not strictly a canalboat, barge or lighter, was certainly a "vessel" within the Limitation Act, saying:

"* * * The act in its present form, therefore, applies in general terms to the owners of all vessels, without exception, and the waters referred to in section 4289 as amended, viz.,

seas, lakes, rivers, and inland waters, comprise all the waters to which the admiralty jurisdiction extends. The law to be administered by the courts exercising that jurisdiction is the maritime law of the country. In the exercise of its power to amend and modify that law, Congress has not only substituted in place of the exceptions formerly made from its general grant of the privilege of limiting liability, a declaration that the privilege shall now be allowed to the owners of vessels used on all the waters within admiralty jurisdiction, but it has also included by express mention the only classes of vessels which were previously so excluded. These facts seem to me to require the conclusion that all craft which are vessels for the purposes of the maritime law are vessels within the intent of the act as it now stands."

* * * * * * *

"It is true that Section 4289, while it now expressly includes canal boats, barges, and lighters among the vessels to which the act is to apply, does not mention scows. No such difference, however, in character or construction, is understood to exist between a "scow" and a "barge" or "lighter" as would support the conclusion that the express inclusion of barges and lighters indicates any intention to exclude scows. For the purposes here material, a scow, and particularly a scow of the dimensions stated in the petition, seems to me a vessel of the same kind as a barge or lighter" (p. 944).

In any event the wharfboat was a "vessel" within the definition of "vessel" in R. S. Section 3, which defines "vessel" as including

"every description of water craft or other artificial contrivance used, or *capable* of being used, as a means of transportation on water."

This wharfboat was in no way built upon the shore but moved in and out, up and down with the stage of the river. In this position she received and discharged cargo between river steamers and the river bank (Record, pp. 74-76). Such use was contemplated by her purchasers and owners. No one can say therefore that she was not "capable of being used as a means of transportation on water". Indeed she actually

was used "as a means of transportation on water" because goods were transported by means of the wharfboat over a stretch of water that varied with the condition of the river.

Various kinds of watercraft have been held to be "vessels" under the Limitation Act.

In *Eastern Steamship Corporation* vs. *Great Lakes Dredge & Dock Company* (C. C. A., 1st Cir.), 256 Fed. 497, petition for certiorari dismissed on motion of petitioner, 250 U. S. 676, the Court held that a sunken drill boat was a vessel under the Limitation Act as amended. The essential character of the boat was that of a marine machine shop. It was 132 feet long, 33 feet beam and about 8 feet deep, carried a boiler, drilling machinery, four two cylinder engines and other apparatus used in drilling. When at work on a ledge it was held in place by four spuds or iron legs. The spuds could be drawn up and the drill towed by a tug from place to place. It was engaged in drilling a ledge of rock at the bottom of the channel about twenty-five feet deep when it sank.

In holding that the drill was a "vessel" within the Limitation Act, the Court said:

"In considering the right of the dredge company to a limitation of its liability under section 4283, it is necessary to determine whether its drillboat No. 4 was a vessel, as defined in section 4289, as amended by Act June 19, 1886, c. 421, § 4, 24 Stat. 80 (Comp. St. § 8027).

"The word 'vessel', as there defined, applies 'to all seagoing vessels, and also to all vessels used on lakes or rivers in inland navigation, including canal boats, barges and lighters,' and has been held to include a barge without motive power used for transporting excursion parties (*In re Myers Excursion & Navigation Co.* [D. C.] 57 Fed. 240; *The Republic*, 61 Fed. 109, 9 C. C. A. 386); a mud scow used in Boston Harbor for moving mud (*In re Eastern Dredging Co.* [D. C.] 138 Fed. 942); a scow originally constructed and

used for carrying stone, and later provided with a derrick and used for raising stone (*The Sunbeam*, 195 Fed. 468, 115 C. C. A. 370); and a scow carrying a pile driver permanently attached thereto (*In re Sanford Ross* [D. C.] 196 Fed. 931, *Id.*, 204 Fed. 248, 122 C. C. A. 516).

"Revised Statutes, § 3 (Comp. St. § 3), defines what craft are vessels for the purposes of the maritime law, and in *In re Eastern Dredging Co.* (D. C.) 138 Fed. 942, 944, it was held that 'all craft which are vessels for the purposes of the maritime law are vessels within the intent of the act as it now stands,' meaning within the intent of the act of 1851 (sections 4283-4289) as amended in 1886. In the case of *Charles Barnes Co.* v. *One Dredgeboat* (D. C.) 169 Fed. 895, Judge Cochran, after an extended review of the cases in an endeavor to ascertain what was a vessel within the meaning of section 3, held that a navigable structure, intended for the transportation of a permanent cargo, and that had to be towed in order to navigate was a vessel. The vessel there in question was a pumpboat. It consisted of a floating structure, equipped with an engine, boiler, pumps, pipes, and capstans, which were permanently attached, and it was used for pumping out coal barges.

"Drillboat No. 4 was a navigable structure having a permanent cargo, viz. its engines, boiler, drilling machinery, etc., which it transported from place to place for the purpose of removing ledges in navigable waters and as an aid to commerce and navigation. It was not a floating dry dock intended to be permanently moored, as was the case in *Cope* v. *Vallette Dry Dock Co.*, 119 U. S. 625, 7 Sup. Ct. 336, 30 L. Ed. 501; but was intended and used for the transportation of a cargo which it carried from place to place to remove ledges. We are therefore of the opinion that it was a vessel, within the meaning of sections 4283-4289, as construed in the cases above cited" (pp. 500-1).

It seems clear that this wharfboat was not only more of a vessel by reason of her construction but that she was more directly a means of transportation than was the drill boat.

In *Craig* v. *Continental Ins. Co.*, *supra*, a wreck, kept afloat only by steam pumps, and capable of navigation only by being towed, was held to be a vessel within the meaning of the Limitation Act.

In *The C. H. Northam*, *supra*, a steamer which had been taken on shore for the purpose of being dismantled was held to be a "vessel" within the meaning of R. S. Sec. 4289, as amended, and her owners were permitted to maintain proceedings for limitation of liability for damage done by her as a result of going adrift in a storm. The Court said:

"She was, therefore, whatever her deficiencies for use as a barge *capable* of floating, of carrying cargo, and of being towed from place to place. Since canal boats, barges, and lighters are vessels for the purposes of the limited liability statutes, by the express terms of Rev. St. U. S. § 4289, as amended in 1886 (Act June 19, 1886, c. 421, § 4, 24 Stat. 80 [U. S. Comp. St. 1901, p. 2945]), it is difficult to see why, so far as capacity for use in navigation is concerned, she is not to be regarded as a vessel within the meaning of those statutes. *In Re* Eastern Dredging Co., 138 Fed. 942, a dumping scow was held to be a vessel in that sense. That a wreck, kept afloat only by steam pumps, and capable of navigation only by being towed, may be a vessel, in the sense referred to, is settled in *Craig* v. *Continental Ins. Co.*, 141 U. S. 638, 12 Sup. Ct. 97, 35 L. Ed. 886.

"It is urged that the question is one to be determined according to the intention or absence of intention of her owners to use her as a vessel, and that in this case the owners had given up all intention of so doing, and were proceeding to dismantle her as rapidly as possible, in order to get at the metal which she contained by burning her. Admitting these to be the facts, I am unable to believe that she ceased to be a vessel, for the purposes of the statutes referred to, until the dismantling process had gone so far as to render her wholly incapable of navigation. However high up on the beach she may have been placed, and whether or not holes had been bored in her bottom to let out water which she contained, that stage of the process had not been reached, and the owners might still have changed their plans without having to make a new vessel out of a mere wreck" (p. 984, italics ours.)

In *The Sunbeam* (C. C. A., 2nd Cir.), 195 Fed. 468, the Court held that the Limitation Act applied to a scow which

had not carried cargo for three years and at the time in question was anchored in the harbor. As the court said:

"She had not carried cargo for three years but she was *capable* of doing so, * * *" (p. 470, italics ours).

In *In re P. Sanford Ross, Inc.* (E. D. N. Y.), 196 Fed. 921, a pile driver moved around from place to place by tugs, although resting upon the bottom at low tide, was held to be a "vessel" within the Limitation Act.

In *Patton-Tully Transportation Co.* vs. *Turner*, 269 Fed. 334 (C. C. A., 6th Cir.), it was held that a derrick boat used for loading logs from a river bank upon boats was a "vessel" within the Limitation Act. This case contains a dictum which is contra to appellant's contention, but the question before this Court was not before the Circuit Court in that case.

In *Charles Barnes Company* vs. *One Dredge Boat, supra*, the Court discussed the enlarged statutory definition contained in R. S. Sec. 3 and held that a pump boat was a "vessel" and that a libel would lie against the boat for supplies or material used in equipping the boat. The exact function of the particular pump boat is stated in the opinion as follows:

"The pumpboat was constructed by said coal company and has never been used by any one but it, and it has used it in its coal harbor in the Ohio river at Ludlow, Ky., in pumping out its coal barges. In doing this work it has been either at one end of the fleet or the other and has been moved from one end to the other with poles or by drawing it with ropes. It is capable of being towed to any place on the Ohio river where its services might be needed.

"The conclusion I draw from all this is that the pumpboat in question is a navigable structure intended for transportation of a permanent cargo, to wit, its engines, boiler, capstans, pumps, and pipes, in order to do the work of pumping where needed, and that therefore it is a 'vessel' and subject to admiralty jurisdiction" (p. 901).

In none of these cases just referred to was the floating structure within the common definition of canal-boat, barge or lighter, nor was its construction so vessel-like as the record shows this wharfboat to have been. And, what is more significant, none of these structures was so capable of use as a means of transportation as the wharfboat, nor was their employment so directly and vitally in the interests of commerce and transportation.

III. THE LIMITATION OF LIABILITY ACT SHOULD RECEIVE A LIBERAL CONSTRUCTION.

We have referred to the aim of Congress in first launching and later amending and greatly broadening the scope of the statute permitting the owners of vessels engaged in ocean and inland commerce to limit their liability in the courts of the United States. This Court has frequently given expression to its attitude regarding the spirit and manner in which this particular legislation should be construed. Its attitude has been one of constant insistence upon a firm adherence to the guiding purpose of the Act.

In *Providence & N. Y. S. S. Co.* vs. *Hill Mfg. Co., supra*, this Court made a succinct utterance, the force and cogency of which have never been questioned and which has become the subject of constant quotation:

"In these provisions of the statute we have sketched in outline a scheme of laws and regulations for the benefit of the shipping interest, the value and importance of which to our maritime commerce can hardly be estimated. Nevertheless, the practical value of the law will largely depend on the manner in which it is administered. If the courts having the execution of it administer it in a spirit of fairness, with the view of giving to ship owners the full benefit of the

immunities intended to be secured by it, the encouragement it will afford to commercial operations (as before stated) will be of the last importance: but if it administered with a tight and grudging hand, construing every clause most unfavorably against the ship owner, and allowing as little as possible to operate in his favor, the law will hardly be worth the trouble of its enactment" (p. 588).

This statement of the proper rule of construction came before the Amendment of 1886, but the frequency with which this court has reiterated the liberal rule of construction advocated in *Providence* vs. *Hill* precludes any argument for a narrow construction based upon the age of the rule. Rather does its long-standing authority evince the worth of its wisdom.

Butler vs. *Boston & Savannah Steamship Co., supra;*

Capitol Transportation Co. vs. *Cambria Steel Co.*, 249 U. S. 334.

The inclination of the courts to keep unaltered this broad interpretation is amply illustrated in the comparatively recent case of *Peoples Navigation Company, Inc.* vs. *Toxey, et al.* (C. C. A., 4th Circuit), 269 Fed. 793, where the Court said:

"We not only recognize, but are in full sympathy with, the numerous authorities holding that this act should be liberally construed in favor of ship owners, so as to encourage ship building, and the employment of ships in commerce" (p. 794).

IV. THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF INDIANA HAD JURISDICTION TO ENTERTAIN THE PETITION OF THE EVANSVILLE & BOWLING GREEN PACKET COMPANY TO LIMIT ITS LIABILITY FOR THE LOSS ARISING FROM THE SINKING OF THE EVANSVILLE WHARFBOAT.

Respectfully submitted,

CHAUNCEY I. CLARK,
PHELPS F. DARBY,
Counsel for Petitioner.

New York City, October, 1925.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1925.

No. 127.

IN THE MATTER OF THE PETITION OF THE EVANSVILLE & BOWLING GREEN PACKET COMPANY, as owner of a wharfboat, for limitation of liability,

Petitioner, Appellant,

vs.

CHERO COLA BOTTLING COMPANY, NATIONAL PRODUCE COMPANY, RAPHAEL BROTHERS DRY GOODS COMPANY, *et al.*,

Claimants, Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

REPLY BRIEF FOR APPELLANT.

CHAUNCEY I. CLARK,
PHELPS F. DARBY,
Counsel for Petitioner, Appellant.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

REPLY BRIEF FOR APPELLANT.

The statement (Appellees' brief, page 6) "Docks and wharves securely fastened to the shore, *even though floating on the water* are not within the admiralty jurisdiction" is not substantiated by the case cited, *Cleveland Terminal & Valley R. R. Co. vs. Cleveland S. S. Co.*, 208 U. S. 316.

We find absolutely no justification for the words "*even though floating on the water.*" In the Cleveland case the damage was to "shore dock, and to bridge, protection piling and pier" (p. 320). There was nothing "floating on the water."

Although appellees concede that "the sole question involved in this case is whether or not the *wharfboat* was a *vessel* within the jurisdiction of a court of admiralty and within the provisions of the Limited Liability Act," (Brief p. 9) their brief continually refers to the boat as a "wharf" not "wharfboat." The word "wharf" as used in appellees' brief might be confused with a wharf alongside the wharfboat, but there was no wharf alongside the wharfboat. Appellees, apparently being concerned about the use of the word "boat", have adopted this expedient, *i. e.*, referring to the boat as a wharf, to avoid embarrassment by use of the proper appellation. In the interrogatories propounded by the same counsel the wharfboat is repeatedly referred to as "wharfboat" and "boat" (Record pp. 129-131).

Indeed, the record shows that during the trial the wharfboat was referred to by Court, counsel or witnesses on 493 occasions (By our count).

289 times it was called a wharfboat;
169 times a boat;
10 times a barge;
20 times a wharf;
5 times either craft, hull or vessel.

Appellees' brief reads:

> "The appellees paid storage charges at monthly rates for the privilege of storing their goods on the *wharf* * * *. (p. 7)

However, in the testimony with reference to the payment for use of the wharfboat, which is quoted in part at pages 22-25 of appellees' brief, the wharfboat is referred to as a "wharfboat" eleven times, once as a "boat."

Counsel nevertheless conclude:

> "The rights, duties and responsibilities of the parties were based upon land contracts and not maritime contracts," (Brief p 7)

Reference is then made to cases involving wharf rent and damage to cargo on wharves, not on wharfboats.

At page 9, appellees' counsel begin the discussion of the facts and say:

> "It appears from the record in this case that this structure consisted of, etc., etc."

They then refer to the wharfboat as a "wooden enclosure," and in the same paragraph and succeeding paragraphs many times as a "wharf." Having ten times referred to the boat as a wharf and making the additional statement that the boat was "stationed permanently" (p. 10), which is contrary to the record, counsel then cite *Cleveland Terminal vs. Cleveland S. S. Co.*, 208 U. S. 316, (p. 11), where a libel for damages to a wharf was dismissed for want of jurisdiction. On the following page (12) they cite another case, *The Plymouth*, where this Court dismissed a libel by the owner of a wharf which was burned by fire.

Counsel for appellees then conclude (p. 12), referring to *Cleveland Terminal vs. Cleveland S. S. Co.* and *The Plymouth*:

> "In the foregoing decisions, it will be seen that the action of the courts in holding that there was no jurisdiction of the case in admiralty courts was based largely upon the grounds that the structures in question, *even though they floated on the waters* or extended over the water, were a continuation of land, and * * * were not structures that were considered vessels * * * ."

The decisions cited do not substantiate the words "*even though they floated on the waters.*" Both the *Cleveland Terminal* and the *Plymouth* cases involved damages to wharves that did not and could not have "*floated*" unless carried away by a flood.

Counsel for appellees assert that:

> "Floating structures, which, although capable of being moved, are from their very nature, build, design and use intended to be *comparatively* permanent, are held not to be vessels within the jurisdiction of admiralty." (Brief, p. 6.)

The cases cited do not substantiate the use of the word "comparatively" before the word "permanent." In *Cope vs. Vallette Dry Dock Co.* the Court was concerned with a dry dock which was actually permanent. To quote from the opinion of this Court, first referring to the facts as found by the Circuit Court:

> "They state that it (dry dock) consisted of a large oblong box, with a flat bottom and perpendicular sides; that in the year 1866 it had been put in position by being *permanently* moored by means of large chains to the right, * * *" (p. 627).
>
> "It was not designed for navigation, and could not be practically used therefor" (p. 627).
>
> "We think no case can be found which would

> construe the terms to include a dry dock, a floating bridge, or meeting house, *permanently* moored or attached to a wharf'' (p. 630) (italics ours).

In *Woodruff vs. One Covered Scow* (E. D. N. Y.) a stationary float was involved. Although the title of the case would indicate that the structure proceeded against was a scow, it was really a ''float,'' ''made of timbers, in width some 11 feet, and in length some 23 feet.'' It was used to store oars and sails of small boats and to afford persons a means of egress from boats coming to the slip of the adjoining wharf and thence to the shore.

Salvage Wrecking Co. vs. Section Dock Co. is another dry dock case, and the remarks under the Cope case are equally applicable to this case. The same is true of *Snyder vs. Floating Dry Dock* (D. C. N. J.). *The Big Jim* (E. D. Pennsylvania) was a pump resting on piles, which had no characteristics of a vessel. *The Steamer Hendrick Hudson* was a saloon and hotel firmly resting on the bottom and ''destined to continue so'' (p. 479). *The Robert W. Parsons* involved a lien for repairs on a canal boat. *Berton vs. Tietjen & Lang Dry Dock Co.* is another dry dock case.

The words ''comparatively permanent'' apparently were found in *Ruddiman vs. A Scow Platform*, 38 Fed. 158 (S. D. N. Y.), a suit for wharfage against a scow platform lying alongside a dock wall at 138th Street, Harlem River, New York. The platform

> ''was designed to be moored alongside a wharf, so that horses with carts could be driven over it from a wharf, with dirt or other refuse to be dumped into boats lying alongside. This was its only use and design. The structure was mainly stationary, and rarely moved.''

The Court used this expression:

> "This structure, though, as I have said, capable of being moved, was designed to be *comparatively* permanent."

The Court held that the structure belonged to the class of cases such as dry docks, floating saloons, bathhouses, floating boathouses and bridges, all of which had been held not to be vessels within the maritime law, and referred to *Cope vs. Vallette Dry Dock Co.* and other cases.

Respectfully submitted,

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Counsel for Petitioner, Appellant.

New York, January 11, 1926.

CONTENTS

	Page
Statement of the Case	1
Summary	6
Argument	9

AUTHORITIES

	Page
Berton *vs.* Tietjan & Lang Dry Dock Co., 219 Fed. 763	7, 8, 18, 29
Big Jim, The, 61 Fed. 503	6
Brookman *vs.* Hamill, 43 N. Y. 554	8
Cleveland Terminal & Val. R. R. Co. *vs.* Cleveland S. S. Co., 208 U. S. 316	6, 11
Cope *vs.* Vallette Dry Dock Co., 119 U. S. 625	6, 12, 14, 17, 18
Cox *vs.* Murray, Fed. Cas. No. 3304	8, 30
Eastern S. S. Corp. *vs.* Great Lakes Dredge & Dock Co., (C. C. A. 1st Cir.) 256 Fed. 497	7, 16
Empire Warehouse Co., Lim. *vs.* The Advance, 71 Fed. 987	25
Galbreath *vs.* Davidson, 25 Ark. 490	8, 28
Gloucester Ferry Co. *vs.* Penn., 114 U. S. 196, 29 L. Ed. 158, 5 S. Ct. Rep. 826-828	21
Henrick Hudson, The Steamer, 3 Ben. 419, 11 Fed. Cas. No. 6355	7, 14
James T. Furber, 129 Fed. 808	7
M. & J. Tracey *vs.* Marks Lissberger & Sons, 283 Fed. 100	26
Old Dominion S. S. Co. *vs.* City of New York, 286 Fed. 155	26
Olmstead *vs.* McNall, 7 Blackford (Ind.) 387	8, 28
P. Sanford Ross, In re: (D. C.) 196 Fed. 921	18
Parkersburg & Ohio River Trans. Co. *vs.* City of Parkersburg, 107 U. S. 691	8, 26
Patton-Tully Trans. Co. *vs.* Turner, 269 Fed. 334	7, 15
Peoples Ferry Co. *vs.* Beers, 20 How, 393, 15 L. Ed. 961	8, 28
Perry *vs.* Haines, The Robert W. Parsons, 191 U. S. 17	14
Plummer vs. Webb, Fed. Cas. No. 11,233	8, 30

	Page
Plymouth, The, 3 Wall, 20	12
Richard *vs.* Hogarth, (D. C. N. J.) 94 Fed. 684	29
Robert W. Parsons, The, 191 U. S. 17	7
Rodger *vs.* Stophel, 32 Pa. St. 111	26
Ruddiman *vs.* A Scow Platform, 38 Fed. 158	7, 20, 21
Salmon Falls Mfg. Co. *vs.* Tangier, 21 Fed. Cas. 12265	7, 25
Salvage Wrecking Co. *vs.* Section Dock Co., 21 Fed. Cas. No. 12273	6
Sheppard *vs.* Steele, 43 N. Y. 52, 2 Am. Rep. 660	8, 28
Snyder *vs.* A Floating Dry Dock, 22 Fed. 685	6, 14
Woodruff *vs.* One Covered Scow, 30 Fed. 269	6, 20

Supreme Court of the United States

In the Matter of the Petition of the EVANSVILLE & BOWLING GREEN PACKET COMPANY, as owner of a wharfboat, for limitation of liability,
Petitioner, Appellant,
vs.
CHERO COLA BOTTLING COMPANY, NATIONAL PRODUCE COMPANY, RAPHAEL BROS. DRY GOODS COMPANY, *et al.*,
Claimants, Appellees.

October Term 1925
No. 127

Appeal from the District Court of the United States for the District of Indiana.

BRIEF FOR THE CHERO COLA BOTTLING COMPANY, NATIONAL PRODUCE COMPANY, RAPHAEL BROTHERS DRY GOODS COMPANY, *et al.*, *Claimants, Appellees.*

STATEMENT OF THE CASE

The appellant in its brief has set out some of the facts but a further statement would more clearly present the question that is before this court for determination.

The appellant is a corporation organized under the laws of the State of Indiana, with its principal office in the City of Evansville, Indiana. It was engaged in the business of operating a line of steamboats from Evansville to various points on Green River in Kentucky.

It also owned a structure designated a wharfboat, which was located at the bank of the Ohio River at the City of Evansville. (Record, pp. 2-35). It was used as a warehouse for the purpose of storing merchandise unloaded from the steamboats, also for storing merchandise intended for shipment on outgoing boats. (Record, p. 37).

The wharfboat is described as a square box two hundred forty-three (243) feet long, forty-eight (48) feet wide, and six (6) feet deep, built of wood and lined on the inside with concrete around the entire structure. The concrete extended from the bottom of the boat to a height along the sides of eighteen (18) to twenty (20) inches and was eight (8) inches in thickness.

The concrete was placed in the wharfboat in the summer of 1921 to strengthen it and stop seepage (Record pp. 37, 67, 131, 132).

The structure floated upon the water and was fastened to the shore by means of four and sometimes five cables. (Record p. 75). Floats and a stage or apron also connected the boat with the shore. These were located at each of the two doors providing drive-

ways from the bank to the wharf. One was near the upper end and one near the lower end. (Record, p. 59 and Exhibits, p. 38 to 39).

At one end of the superstructure was located an office and quarters for the men in charge. It was lighted by electric wiring connected with the City plant. It had plumbing and procured its water supply from the City. It was also connected with the City by telephone. (Record, pp. 47, 58).

No freight was collected but a wharfage charge was made to cover storage when goods were left on the wharf, and for receiving and handling such goods and for clerical work. (Record, pp. 41, 74, 80, 81). The Evansville shippers had the privilege of paying a fixed monthly rental for the use of the wharf ranging from Two and 50-100 Dollars ($2.50) per month to Fifteen Dollars ($15.00) per month. (Record, pp. 81, 121, 123). No freight was charged or earned by the wharf. It made no voyages. It was located continuously at the same point where it was attached to the shore except that it moved up and down the bank to conform to the stage of the river. From the time the appellant company purchased the wharf in 1915 until it sank, May 14, 1922, it remained at the same point attached to the shore, except when it was towed to Green River Harbor to escape the ice, at which times it was not in use. It had no engine, machinery, or power of propulsion; no rudder or steering gear, no smoke stack or pilot house. It transported neither freight nor passengers. It had no means of self propulsion.

The wharf was not subject to inspection by Government inspectors as steamboats and other vessels operating on navigable waters are. (Record, pp. 68, 116).

The wharf has no master, pilot, or crew. The duties of the chief officer are to act as general agent and to have charge of the clerical work of receiving the freight. And he hires the clerical assistants and the deck men. (Record, p. 38).

On the morning of May 14th, 1922, the wharf sank, the outer edges lying in about seven (7) feet of water with about six (6) inches of the cargo box under water.

One of the appellees, The Boetticher & Kellogg Co., made a demand upon appellant for the amount of loss sustained by reason of the damage and loss of goods which it had stored on the wharf and brought an action in the Superior Court of Vanderburgh County, Indiana, for the recovery of damages. Afterward the appellant filed its petition in the District Court of the United States for the District of Indiana under the limitation of liability act, and procured a monition and a restraining order against all of the appellees, restraining them from bringing or prosecuting actions in the State Court. (Record, pp. 7, 8, 121).

The appellees entered their special appearance and filed exceptions to the petition upon the grounds that the District Court had no jurisdiction. The exceptions were overruled. (Record, pp. 8-12).

The appellees filed their answers (Record, pp. 12-26).

Upon the trial of the cause on the 6th day of May, 1924, the court dismissed the petition for want of jurisdiction of the subject matter. The decree of the court was as follows:

"This cause comes on to be heard further at this term, and is argued by counsel, and thereupon upon consideration thereof,

It is ordered, adjudged and decreed that the Court has no jurisdiction of the subject-matter of said cause, and that said cause be and the same is therefore now dismissed, and that each party pay its own costs, to all of which the Evansville and Bowling Green Packet Company at the time excepts."

This memorandum of opinion by the court omitting the title was as follows:

"When this case was presented to me upon exceptions to the libel, my first impression was that the wharfboat in question was not a vessel within the maritime law, but as the exceptions simply raised the question as to the wharfboat described in the libel, and as the proof of the actual construction, use, etc. of the wharfboat might throw additional light upon the subject, I resolved the doubt in favor of the petitioner and overruled the exceptions. The case was afterwards put at issue and tried. The evidence is in the record. It was fully argued and has been thoroughly briefed by counsel on both sides.

In my opinion, the structure shown by the proofs and described (fols. 135-140) in the evidence, is not a

vessel within the maritime law; that therefore this court is without jurisdiction of this cause, and it should, for that reason, be dismissed.

It is so ordered, and a decree to that effect may be prepared and submitted to the court."

SUMMARY.

1. The Structure in question designated as the Evansville Wharfboat was a warehouse so constructed that it would float upon the water, but was fastened securely to the shore by means of four or five large cables.

Docks and wharves securely fastened to the shore, even though floating on the water, are not within the admiralty jurisdiction.

Cleveland Terminal & Valley R. R. Co. vs. Cleveland S. S. Co., 208 U. S. 316.

2. Floating structures, which, although capable of being moved, are from their nature, build, design, and use intended to be comparatively permanent, are held not to be vessels within the jurisdiction of admiralty.

Cope vs. Vallette Dry Dock Co., 119 U. S. 625;

Woodruff vs. One Covered Scow, 30 Fed. 269;

Salvage Wrecking Co. vs. Section Dock Co., 21 Fed. Cas. No. 12,273;

Snyder vs. Floating Dry Dock, 22 Fed. 685;

The Big Jim, 61 Fed. 503;

The Steamer Hendrick Hudson, 3 Ben 419, 11 Fed. Cas. No. 6355;

Ruddiman vs. A Scow Platform, 38 Fed. 158;

The Robert W. Parsons, 191 U. S. 17;

Berton vs. Tietjan & Lang Dry Dock Co., 219 Fed. 763.

3. In some cases where the structure in question was moved about from place to place under some power other than its own in the discharge of its service, it was held to be a vessel within the maritime law, but the courts in their decisions have distinguished these from cases where the structure, although floating upon the water, remained fixed and was not moved about from place to place.

Patton-Tully Transportation Co. vs. Turner, 269 Fed. 334;

Eastern S. S. Corporation vs. Great Lakes Dredge & Dock Co., (C. C. A. 1st Cir.), 256 Fed. 497.

4. The Evansville Wharfboat made no voyages and earned no freight. The appellees paid storage charges at monthly rates for the privilege of storing their goods on the wharf while awaiting shipment on steamboats, or after the goods were unloaded from steamboats. The rights, duties and responsibilities of the parties were based upon land contracts and not maritime contracts.

James T. Furber, 129 Fed. 808;

Salmon Falls Mfg. Co. vs. Tangier, 21 Fed. Cas. No. 12265;

Parkersburg & Ohio River Transportation Co. vs. City of Parkersburg, 107 U. S. 691;
Peoples Ferry Co. vs. Beers, 20 Howard 393;
Sheppard vs. Steele, 43 N. Y. 52;
Brookman vs. Hamill, 43 N. Y. 554;
Olmstead vs. McNall, 7 Blackf. 38;
Galbreath vs. Davidson, 25 Ark. 490.

5. In order to give the Federal Courts jurisdiction as Courts of Admiralty, it is necessary that the entire subject matter be maritime. It is not a sufficient foundation for admiralty jurisdiction that there are involved some ingredients of a maritime nature.

Cox vs. Murray, Fed. Cas. No. 3304;
Berton vs. Tietjan & Lang Dry Dock Co., 219 Fed. 763;
Plummer vs. Webb, Fed. Cas. No. 11,233.

6. While wharves, docks and levees are all aids to navigation, Congress has never undertaken to provide for their regulation or supervision but has left that exclusively to the States.

Parkersburg & Ohio River Transp. Co. vs. City of Parkersburg, 107 U. S. 691.

7. The Statutes of Indiana, Burns Rev. Stat. 1914, Sec. 8655, delegates to the Common Council of Cities the right to control and regulate wharves and the loading and unloading and the landing of boats and watercraft.

8. There is no authority, even under the guise of a liberal construction of the limitation act, to under-

take to extend the Federal jurisdiction to the exclusion of the rights of the parties under the State law.

ARGUMENT.

The sole question involved in this case is whether or not the wharfboat was a vessel within the jurisdiction of a court of admiralty and within the provisions of the limited liability act.

There are numerous decisions in this court and other courts which bear upon this question and we will undertake to show that none of these decisions have gone to the extent of holding that a structure of this kind firmly attached to land and forming a connection between the land and the water is a vessel within the purview of the admiralty law or within the provision of the limitation of liability act.

There are many tests used by the courts in determining this question and among them may be enumerated the following:

1. The manner of the construction and equipment of the structure.
2. The purpose for which it was constructed.
3. The business in which it is engaged.

We shall undertake to discuss this question with these points in mind. It appears from the record in this case that this structure consisted of a rectangular wooden enclosure two hundred forty-three (243) feet long, forty-three (43) feet wide and six (6) feet deep, all of the sides of which were perfectly parallel and perpendicular, and upon which was constructed a car-

go box or ware room, and upon one end of which was a large room fitted up for quarters for the men in charge of the wharf and as a business office; that it contained no machinery or apparatus of any kind for its own propulsion or steering; that it made no voyages, either for the carriage of freight or passengers, or for any other purpose whatever, but that it was during all the time from its purchase by the appellant in 1915 until the time it sank, May 14, 1922, stationed permanently at the bank of the Ohio River in the City of Evansville, Indiana, securely fastened to the shore by four and sometimes five heavy cables, and maintained in its position by spars extending from the shore to the wharf; that it was further attached to the shore by two floating pontoons and stages or aprons, the pontoons being located next to the wharf and the aprons extending from the pontoons to the bank and thus affording a driveway for trucks and other vehicles from the shore to the wharf; one pontoon and apron being located at the doorway near the upper end of the wharf and one at the doorway near the lower end of the wharf, so that trucks and other vehicles might drive on the wharf at one doorway and off at the other after loading and unloading.

It further appears from the evidence that the wharf was also connected with the shore in that the plumbing on the wharf was connected with the water mains of the City of Evansville, for the purpose of furnishing water for the use of the men on the wharf; that it was connected also with the City Electric Light

Plant and procured its light from the City; that it was connected with the telephone system of the City of Evansville and had a telephone installed in the office.

The only occasion upon which the wharf was moved during all the period of time from her purchase by the appellant in 1915 to the time of her sinking, May 14, 1922, was when it was towed to the ice harbor in Green River to escape the danger from ice.

In *Cleveland Terminal & Val. R. R. Co. vs. Cleveland S. S. Co.*, 208 U. S. 316, a libel in rem was brought against the steam propellor, William E. Rines, for damages to the center pier of a railroad bridge spanning the Cuyahoga River, a navigable stream at Cleveland, Ohio, and for damages to a dock or wharf below the bridge. The District Court sustained exceptions and dismissed the libel for want of jurisdiction. Justice Fuller sustained the decree dismissing the libel for want of jurisdiction and in the decision says:

"But the bridge, shore docks, protection piling piers, etc., pertain to the land. They were structures connected with the shore and immediately concerned commerce upon the land. None of these structures were aids to navigation in the maritime sense but extensions of the shore and aids to commerce on land as such."

In this connection, attention is called to the language used by the appellant in its petition herein to describe the Evansville Wharfboat. The words used are as follows:

"which vessel then being used by this petitioner in said port of Evansville in such manner as to form a

communication between the land and the vessels loading or unloading or receiving and landing passengers and freight at said port."

In *The Plymouth*, 3 Wallace 20, a libel was brought by the owner of a wharf which was burned by a fire negligently started in the Steamer Falcon lying next to the wharf of the libellant. The Steamer Plymouth belonging to the same company was libelled.

The petition was dismissed in the District Court and on appeal the decision of the District Court was affirmed and the case dismissed. It was held by the court that the remedy for the injury belonged to the court of common law and that the admiralty court had no jurisdiction.

In the foregoing decisions, it will be seen that the action of the courts in holding that there was no jurisdiction of the case in admiralty courts was based largely upon the grounds that the structures in question, even though they floated on the waters or extended over the water, were a continuation of land, and even though they had been considered in a sense aids to navigation, were not structures that were considered vessels used upon navigable waters for the purpose of transportation.

There is another line of cases in which the decisions are based upon the purpose for which the structure was constructed and the manner in which it is used. The leading case in this class is that of *Cope vs. Vallette Dry Dock Co.*, 119 U. S. 625. It was held that a fixed structure, contrived for the purpose of taking

ships out of the water in order to repair them and for no other purpose, consisting of a large oblong box with a flat bottom and perpendicular sides, with no means of propulsion and not designed for navigation but only as a floating dry dock, is not within the admiralty jurisdiction and is not a subject of salvage service. Mr. Justice Bradley in delivering the opinion of the court, used the following language:

"We have no hesitation in saying that the decree of the Circuit Court was right. A fixed structure such as this dry dock is, not used for the purpose of navigation, is not a subject of salvage service any more than is a wharf or a warehouse when projecting into or upon the water. The fact that it floats on the water does not make it a ship or vessel, and no structure that is not a ship or vessel is a subject of salvage. A ferry bridge is generally a floating structure hinged or chained to a wharf. This might be the subject of salvage as well as a dry dock. A sailor's floating bethel or meeting house moored to a wharf and kept in place by a paling of surrounding piles is in the same category. It can hardly be contended that such a structure is susceptible of salvage service."

And further the court uses the following very significant language in this opinion:

"We think no case can be found which would construe the terms "ship-vessel" to include a dry dock, floating bridge or meeting house permanently moored or attached to a wharf."

The same principle was decreed by Mr. Justice Brown delivering the opinion of the Supreme Court in the case of *Perry vs. Haines—The Robert W. Parson*, 191 U. S. 17. The language of the court is as follows:

"In fact, neither size, form, equipment nor means of propulsion are determinative factors upon the question of jurisdiction, which regards only the purpose for which the craft was constructed, and the business in which it is engaged. The application of this criterion has ruled out the floating dry dock, the floating wharf, the ferry bridge hinged or chained to a wharf, the sailors' bethel moored to a wharf. (*Cope vs. Valette Dry Dock Co.*, 119 U. S. 625) a gas float moored as a beacon, (*The Whitton*) (1895) P. 301; (1896) P. 42; (1897) A. C. 337."

The cases we have just referred to are in harmony with the earlier decisions of the U. S. Supreme Court. In the case of *Snyder vs. A Floating Dry Dock*, 22 Fed. 685, Judge Nixen reviewed a number of earlier decisions and among them the case of *Henrick Hudson*, 3 Ben 419. This was a case in rem against a floating steamboat which had been dismantled and stripped of her boiler, engine, and paddle wheel and fitted up as a saloon and hotel. It was capable of being towed from place to place on the river. While being towed, it sank, and libellants with the use of their propellors pumped her out and brought action for salvage. The defense was that the boat was without motive power and not used in commerce and that the court had no jurisdiction. Justice Bradley dismissed the libel for the rea-

son that the hull was not in any proper sense engaged in commerce. The court said:

"A floating house of religious worship or a floating swimming bath, or a floating residence could be towed and in such a sense navigated, but such a structure would not be engaged in navigation in such a sense as to be liable in rem in the admiralty for a service like the present one. The fact that the structure had the shape of a vessel or had once been used as a vessel or could by proper appliance be again used as such cannot affect the question."

In quite a number of cases the courts have held that a structure was a vessel within the provisions of the admiralty jurisdiction upon the grounds that it was used in aid of navigation, and that in the performance of its service it was moved from place to place upon the water.

In the case of *Patton-Tully Transportation Co. vs. Turner*, 269 Fed. 334, decided by the Circuit Court of Appeals for the 6th Circuit in December, 1920, it was held that a derrick boat used for loading and unloading logs from the river bank upon and from boats, first at one point and then at another, was a "vessel". Attention is called to the fact that the structure under consideration in this case, just as in the other cases where they were held to be "vessels", was one which in the performance of its duties was navigated from place to place. In the court's decision, the following language is used:

"From the cases cited, we assume (without expressly deciding) that a wharf or floating wharf, carrying this type of loading machinery, but firmly moored to land, would be outside the maritime jurisdiction, even though it was contemplated that it might, on occasion, be towed to another location, and we likewise assume that a barge carrying similar machinery, but customarily moved about a harbor and transferring cargo from one vessel to another would be within that jurisdiction."

In this connection, the appellees respectfully direct the attention of the court to the fact that in every instance where a structure has been held to be a "vessel", it was moved about from place to place in the discharge of the service for which it was intended, either under its own power or some other power, and transported from place to place a cargo consisting either of merchandise being transported or of machinery and equipment used for the purpose of transportation and that without exception it has been held by the courts that where a structure is permanently fastened or moored to the shore and is not moved from place to place in the discharge of its duties, such structure is not a "vessel".

In appellant's brief, reference is made to the case of *Eastern S. S. Corporation vs. Great Lakes Dredge & Dock Co.*, (C. C. A. 1st Cir.), 256 Fed. 497. In this case the Circuit Court of Appeals held that a drill boat was a vessel. This drill boat was a navigable structure having a permanent cargo, viz; its engine, boiler,

drilling machinery, etc., which it transported from place to place, for the purpose of removing ledges in navigable waters, and as an aid to commerce and navigation. The court further says:

"It was not a floating dry dock intended to be permanently moored as was the case in *Cope vs. Vallette Dry Dock Co.*, 119 U. S. 625, but was intended and used for the transportation of a cargo which it carried from place to place to remove ledges. We are therefore of the opinion that it is a vessel within the meaning of Sec. 4283-4289, as construed in the cases above cited."

This case was appealed to the Supreme Court but was dismissed by the petitioners.

Circuit Judge Anderson in a dissenting opinion, says in part:

"Undoubtedly the Amendment of 1886 exten the scope of the Limited Liability Act of 1851. But barges and lighters now included are to some extent commercial carriers. They may fairly be called a part of our merchant marine. Congress did not, it seems to me, intend to limit the doctrine of respondeat superior for the benefit of every owner of anything which can be floated, and which might as an incident of its use, occasionally be floated. A dry dock was floated from the United States to the Philippines. The fact that it was floated, and (to use the language of the majority opinion) was an "aid to commerce and navigation" did not make it a vessel within the meaning of the limited liability act. A bell buoy floats and is an aid to navigation. Is it a vessel? Piers and light-

houses are great "aids to navigation". So is every means of improvement of navigable waters, but something more is necessary in order to make the "aid" a "vessel" within the meaning of the limited liability act. It is true that in the *P. Sanford Ross Case* (D. C.), 196 Fed. 921, it was held that a barge on which was mounted a pile driver described as "a permanent cargo" was a vessel within the limited liability act. But this pile driver might have been removed and the barge used for ordinary transportation work. Drill Boat No. 4 was much more like a dry dock than like a barge with the attached pile driver. To hold that this drill boat was a vessel is nearly, if not quite, to change the statutory definition so as to read: The word 'vessel' includes every artificial contrivance capable of being floated. It eliminates the idea that a floater shall be the means of transportation, that is, that it shall perform some carrier function. The determination of this case does not, in my opinion, require us to hold that this drill boat was a vessel. To extend the doctrine of limited liability to everything floated and floatable is in my view to menace and not to promote commerce and navigation."

The decision of the Supreme Court in the case of *Cope vs. Vallette Dry Dock Co., supra*, has been cited and followed as the leading and highest authority upon the questions involved in that case. It has been cited and followed in the comparatively recent case of *Berton vs. Tietjan & Lang Dry Dock Co.*, 219 Fed. 763. This was an action that was originally brought in the State Court of New Jersey to recover under the com-

pensation law for injuries sustained by the plaintiff while repairing a tug which was in defendant's dry dock in the Hudson River at Hoboken. The defendant procured the removal of the case to the Federal Court on the ground that it was of admiralty jurisdiction and filed its petition for limitation of liability under Sec. 4283-4284-4285. The court remanded the case back to the State Court where it was originally brought upon the grounds that the dry dock was not a vessel and that the Federal Court did not have jurisdiction; the parties being both citizens of the same state, and the limitation liability act not applying, the suit should be remanded back to the State Court whence it came.

The case of *Old Natchez* is cited and discussed by the appellants, and in their brief they refer to it as a wharfboat. As a matter of fact it was not a wharfboat and never had been used as such. It was an old steamboat which had been partly dismantled by the removal of a part of her machinery. In the United States Circuit Court on appeal, she was held to be a subject of salvage service, but the Circuit Court in its decision says:

"Whether a boat fitted, arranged, and actually used as a wharfboat can be the recipient of maritime service in saving her from impending peril so as to make her liable for salvage, it is not necessary to decide."

The court in further reviewing the decision of the District Court used the following language:

"Conceding that the actual use of the property may determine the right to salvage as was decided in the Hudson case, yet here the Natchez was not yet used as a wharfboat, but stood upon the same footing as any other barge moored to the bank of the river waiting to be loaded, towed away permanently, tied up, or broken up as the business or interests of the owners might suggest or require."

This decision of the Circuit Court therefore lends no support to the proposition that a wharfboat is included within the term "vessel" as used in the maritime law but rather supports the proposition that a dismantled steamboat is subject to salvage service notwithstanding the fact that some of her machinery and equipment has been removed.

In *Ruddiman vs. A Scow Platform*, 38 Fed. 158, it was held that:

"A floating structure designed to be moored alongside a wharf so that carts containing refuse to be dumped into boats can be driven over it from the wharf is not a vessel within the meaning of the maritime law and no lien for wharfage attached to it under that law."

In the case of *Woodruff vs. One Covered Scow*, 30 Fed. 269 it was held that:

A float supporting a floor and a house, used to store oars and sails of small boats landing at it and as a means of egress from it to the wharf at which it was moored and thence to the shore, being stationary and

never employed in transportation upon the water, cannot be held to be a ship or vessel.

"This structure, though, as I have said, capable of being moved, was designed to be comparatively permanent. By its nature, build, design, and use, it belonged to that considerable class of cases, such as dry docks, floating saloons, bath houses, floating bethels, floating boat houses and floating bridges, all of which have been held not to be vessels within the maritime law."

Ruddiman vs. A Scow Platform, supra.

These decisions also are cited in support of the proposition that the structure, whatever the nature of it is, which is securely fastened to the shore cannot be considered a "vessel" under the maritime law.

Section 3 of the United States Revised Statutes is as follows:

"The word 'vessel' includes every description of watercraft or other artificial contrivance used or capable of being used, as a means of transportation on water."

The foregoing statute uses the word "transportation", solely and exclusively in the limited sense of transporting or carrying freight or passengers from one place to another.

"Transportation implies the taking up of persons or property at some point, and putting them down at another."

Gloucester Ferry Co. vs. Penn., 114 U. S. 196, 29 L. Ed. 158, 5 SCT 826, 828.

THE EVANSVILLE WHARFBOAT WAS NOT A VESSEL IN THE LIMITATION OF LIABILITY ACT FOR THE FURTHER REASON THAT SHE DID NOT TRANSPORT NOR CARRY FREIGHT BUT WAS MERELY A FLOATING WAREHOUSE.

This is another distinction that clearly eliminates the subject matter of this action from admiralty jurisdiction. The claims of the appellees against the appellant arises out of contracts for storage and not freight. It appears from the record that some of the shippers paid a fixed monthly storage or warehouse charge instead of paying on the basis of the amount of merchandise passing over the wharf.

The examination of Oscar Boetticher, an officer of the appellee, Boetticher Kellogg Company, is found at P. 121 of the record and is as follows:

Q. You are an officer of the Boetticher Kellogg Company?

A. One of the Vice-Presidents.

Q. And had charge of the shipment of this freight on the Evansville Wharfboat?

A. No, I didn't have charge of that. We have a shipping Clerk.

Q. But your company did have some goods on the boat when it sank?

A. Yes sir.

Q. For which you filed your claim before the Master?

A. Yes sir, about eighteen hundred dollars worth.

Q. Have you ever gotten any of it?

A. We never have gotten a cent.

Q. State whether or not you made a demand and afterward followed that by a suit in the Superior Court of Vanderburgh County.

A. Yes sir.

Q. And were prevented from going any further by the order of this court?

A. Yes sir.

Q. What arrangement did you have with the Evansville Wharfboat Company about the storage charge on the wharfboat?

A. We paid them $15.00 a month to haul the freight on the wharfboat and get a receipt for it, usually on the day that the boat is supposed to sail or leave the wharfboat.

Q. And at the time she sank in May, 1922, you were at that time paying $15.00 a month storage charge for use of the wharfboat?

A. I think that was the amount at that time. I know it is $15.00 now.

Examination of F. A. Dickman, a witness on behalf of the appellee, Globe-Bosse-World Furniture Co. Questions by Mr. Kahn. Record, p. 123.

Q. You are the Credit Manager for the Globe-Bosse-World Furniture Co.?

A. Yes, manager and cashier.

Q. Was that company one who had merchandise aboard at the time of the sinking of this wharfboat?

A. Yes sir.

Q. Did that company have an arrangement with the Evansville and Bowling Green Packet Company, with reference to the use of the wharfboat at Evansville, at that time?

A. Yes sir.

Q. Will you please state what it was?

A. The arrangement at that time was $2.50 per month flat rate for the privilege of loading freight on the wharf. They received it on the wharf and then reloaded it on to the boats as they came in.

The wharfage charge was separate and distinct from any freight charge. It was an amount paid for storage of the merchandise either while waiting shipment on a steamboat or after it had been landed from the boat in the case of incoming freight.

A part of the cross examination of Jeff H. Williams, General Agent of the appellant and manager of the wharfboat as the same appears at pp. 80 and 81 of the record. Questions by Mr. Kahn.

Q. Now the wharfboat received a separate wharfage charge, did it, for handling each item of freight?

A. Well, we received a wharfage charge from all shipments regardless of where they originated or their destination. It is in our tariff that the wharfage charge of two and a half cents a hundred, a fifteen cent minimum, and a drayage charge of twenty-five cents a hundred, that is part of the through freight charge.

Q. And that is in addition to the charge that boats operated by your corporation or any other corporation may charge or receive for carriage?

A. That is in addition to freight, yes.

Q. That goes to the wharfboat?

A. Yes sir.

Q. And some of that charge is a flat monthly charge, is it not?

A. Well, they have the liberty of paying the—the local people do.

Q. At that time in May, 1922, when the wharfboat sank and some time prior to that time, wasn't there an arrangement between your company and local shippers in Evansville whereby they would have the use of the wharfboat as such, at a monthly rate?

A. Yes sir, it was their privilege to pay that.

Q. And that was in addition to the carriage charge?

A. Yes sir, they had the privilege of paying that.

It has been repeatedly held by the courts that actions growing out of the relations between the shipper and the wharfinger pertain to the land and are not of a maritime nature. In the case of *James T. Furber*, 129 Fed. 808, the court held that a lease of space at a wharf for use at a fixed rental is a lease of real estate and not a maritime contract on which a suit in admiralty can be maintained for the collection of rent since it has not necessarily any connection with navigation or the commerce of the seas.

Empire Warehouse Co. Lim. vs. The Advance, 71 Fed. 987.

To the same effect is the case of *Salmon Falls Mfg. Co. vs. Tangier*, 21 Fed. Cas. 12265, in which it was

held that the limitation of liability act does not apply to a loss of goods by fire after they are landed on the wharf.

The fact that the appellant operated a steamboat in addition to operating a wharfboat does not change the rule fixing its liability as a wharfinger. The appellant owns and operates the Evansville Wharfboat as a public wharf for the use, not only of its own steamboats but steamboats belonging to others. After goods had been transferred from the wharfboat to the steamboats for transportation, then the limited liability act no doubt applies. Before that, the appellant is liable in its other capacity as a wharfinger, and there is a distinct line of demarcation between its liability as a wharfinger and its liability as a carrier of goods on its steamboats.

A wharfinger has been defined as one who maintains for hire a wharf for receiving goods.

Rodger vs. Stophel, 32 Pa. St. 111;
Old Dominion S. S. Co. vs. City of New York, 286 Fed. 155;
M. & J. Tracey vs. Marks Lissberger & Sons, 283 Fed. 100.

The case of *Parkersburg and Ohio River Transportation Company vs. City of Parkersburg*, 107 U. S. 691, is in point upon the question under discussion. This was an action by the transportation company against the City of Parkersburg to restrain the collection of wharf duties upon the grounds that the collection of wharfage was illegal because it was in conflict

with the Constitutional provision relating to the regulation of commerce and prohibiting any state from laying a duty on tonnage. The Supreme Court in its decision dismissing the bill for want of jurisdiction said:

"Now wharves, levees and landing places are essential to commerce by water no less than a navigable channel and a clear river but they are attached to the land. They are private property, real estate and they are primarily, at least, subject to the local state laws. Congress has never yet interposed to supervise their administration. It has hitherto left this exclusively to the States."

Congress has seen fit to regulate steamboats, gasoline boats, flat boats, barges, lighters, and all manner of craft actually navigating the rivers and lakes. It provides for inspecting and equipping steamboats, barges, canal boats, and lighters. It regulates the manner in which they shall be operated, provides for certain signals to be used by one boat on meeting or passing another boat, for the display of colored lights at night, for the examining and licensing of pilots, for the registration of such boats and vessels, but Congress has left to the States and municipalities the matter of regulating the subject of wharves.

Sec. 8655 Burns' Rev. Stat. of 1914, Clause 29, defining the powers of the Common Council of the cities, provides as follows:

"To establish and maintain a wharf or wharves, control and regulate the same, to fix the rates of wharfage and enforce the collection of the same, to

regulate the landing of boats and watercraft and the loading or unloading thereof, etc."

The appellees insist that the question of the liability of the appellant is governed by the laws of the State of Indiana. All of the parties are residents of Indiana. The contracts for the storage of goods on the wharf were made in Indiana. One of the appellees, Boetticher Kellogg Co., after making demand on the appellant for the loss sustained, brought an action against the appellant in the State Court to recover its damages, and it was after this that the appellant filed its petition in the Federal Court, and procured a restraining order against the prosecution of that action. Courts of admiralty cannot and do not exercise jurisdiction in any form whatever in actions growing out of land contracts.

Peoples Ferry Co. vs. Beers, 20 Howard 393, 15 L. Ed. 961;

Sheppard vs. Steele, 43 N. Y. 52, 2 Am. Rep. 660.

In the case of *Olmstead vs. McNall*, 7 Blackf. 387, it was held that the term: "boats and other vessels" in a statute giving a lien for repairs, etc., does not include a floating wharf, but the court permitted the foreclosure of a mechanic's lien on a wharfboat.

In *Galbreath vs. Davidson*, 25 Ark. 490, it was held that a wharfboat is not a boat in the sense that it is a vessel, but rather it is a building or floating business house and sustained by cables.

In fact, the courts have gone even farther than this and taken the position that where any part of the subject matter was not of a maritime nature, the admiralty courts would not assume jurisdiction.

Art. 3, Sec. 2, of the Constitution of the United States provides that the judicial power of the United States Courts is extended "to all cases of admiralty and maritime jurisdiction". In the acts of Congress codifying the laws pertaining to the judiciary, approved March 3, 1911, and which took effect January 1, 1912, it is provided that the District Courts "have original jurisdiction of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common law remedy where the common law is competent to give it." It is evident that the purpose of Congress in this enactment was to concede to every one his remedy under the common law or under the provisions of the law of his state and the right to seek redress in the State Court except in all cases where the subject matter was clearly and entirely of a maritime nature.

As was said by the court in the case of *Berton vs. Tietjan & Lang Dry Dock Co.*, 219 Fed. 763,

"It is only where the substance of the whole contract is maritime that a court of admiralty takes jurisdiction."

In the opinion in this case the court referred among other citations to the case of *Richard vs. Hogarth*, (D. C., District New Jersey) 94 Fed. 684. In this case a libel was filed to recover compensation for

effecting a contract of affreightment for the steamship Folbridge. The defendants raised the question of jurisdiction. The libel was dismissed by the District Court for want of jurisdiction, and in the opinion, the court quotes and approves the language of Judge Betts in *Cox vs. Murray*, Fed. Cas. No. 3304 as follows:

"Undertakings which are merely personal in their character, or which are preliminary to maritime contracts, do not seem ever to have been recognized as within the admiralty jurisdiction."

Further on in the decision the court says:

"In order to give the court jurisdiction, the substance of the whole contract must be maritime. It is not a sufficient foundation for admiralty jurisdiction that there are involved some ingredients of a maritime nature." Citing *Plummer vs. Webb*, Feb. Cas. No. 11,233.

Applying this reasoning to the case at bar, we say that the relationship of the parties is controlled by their agreement for storage upon the wharf of the appellant, and that these contracts were land contracts and did not pertain to maritime subjects simply because the same goods were afterward to be shipped upon steamboats belonging to the appellant or other persons.

The fact that the wharf was to be used for storing goods preliminary to their shipment is evidence that the wharf was merely an *aid to transportation* and not a *means of transportation.*

We respectfully present the argument and reasoning in the cases last above referred to, also upon the proposition that the courts are not disposed to extend the jurisdiction in admiralty or to extend the relief provided in the limitation of liability act to those cases which do not clearly come within the bounds of the jurisdiction as fixed by the Constitution and the rules of admiralty.

The appellees respectfully submit that the Evansville Wharfboat is not a vessel within the maritime jurisdiction or within the provisions of the limitation of liability act, and that the decision of the District Court should be approved and this cause dismissed for want of jurisdiction.

Respectfully submitted,
JAMES T. CUTLER,
JOSEPH H. IGLEHART,
PAUL H. SCHMIDT,
ISIDOR KAHN.

Evansville, Indiana, December, 1925.

SUPREME COURT OF THE UNITED STATES.

No. 127.—October Term, 1925.

The Evansville and Bowling Green Packet Company, Appellant, *vs.* Chero Cola Bottling Company et al. } Appeal from the United States District Court for the District of Indiana.

[April 12, 1926.]

Mr. Justice Butler delivered the opinion of the Court.

Appellant owned a wharfboat in the Ohio River at Evansville, Indiana. May 14, 1922, it sank causing damage to appellee's merchandise thereon. Appellant filed a petition in admiralty for limitation of liability. Appellees answered; and, after a trial at which much evidence as to the character of the structure was given, the District Court found that it was not a vessel within the meaning of the statutes sought to be invoked; held that the court was without jurisdiction, and dismissed the cause. The appeal is under § 238, Judicial Code, and the question of jurisdiction alone is certified.

Section 4283, Revised Statutes, provides: "The liability of the owner of any vessel, for any embezzlement, loss, or destruction, by any person, of any property, goods, or merchandise, shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, lost [loss], damage, or forfeiture, done, occasioned, or incurred, without the privity, or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner in such vessel, and her freight then pending." Section 3, Revised Statutes, provides: "The word 'vessel' includes every description of water-craft or other artificial contrivance used, or capable of being used, as a means of transportation on water." The Act of June 19, 1886, § 4, c. 421, 24 Stat. 79, 80, makes the provisions relating to limitation of liability apply to "all vessels used on lakes or

rivers or in inland navigation, including canal-boats, barges, and lighters."

Appellant was engaged in operating steamboats between Evansville and places on the Green River in Kentucky. The wharfboat in question was built in 1884 and was used at Hopefield, Arkansas, on the Mississippi River. In 1901 it was towed to Madison, Indiana, where it was overhauled, and then to Louisville, Kentucky, where it was used. In 1910, after more repairs at Madison, it was taken to Evansville. Appellant acquired it in 1915. Each winter it was towed to Green River harbor to protect it from ice. While in use at Evansville it was secured to the shore by four or five cables and remained at the same point except when moved to conform to the stage of the river. The lower part of the structure was rectangular, 243 feet long, 48 feet wide and six feet deep. It was built of wood and, to strengthen it and keep the water out, was lined around the sides and ends, extending 18 or 20 inches from the bottom, with concrete eight inches thick. It had no machinery or power for propulsion and was not subject to government inspection as are vessels operated on navigable waters. There was plumbing in the structure, and it was connected with the city water system; it obtained current for electric light from the city plant, and had telephone connections. Appellant's office and quarters for the men in charge were located in one end of the structure. There were floats and an apron making a driveway between the land and a door near each end. The wharfboat was used to transfer freight between steamboats and land and from one steamboat to another. Some shippers paid fixed monthly charges for storage of their goods on the structure and for services in transferring them to and from steamboats. Charges made for services performed by its use were for storage and handling and not for transportation.

The rule of limited liability of owners of vessels is an ancient one. It has been administered in the courts of admiralty in Europe from time immemorial and by statute applied in England for nearly two centuries. See *Providence & New York S. S. Co.* v. *Hill Mfg. Co.*, 109 U. S. 578, 593; *The Main* v. *Williams*, 152 U. S. 122, 127. Our statutes establishing the rule were enacted to promote the building of ships, to encourage the business of navigation, and in that respect to put this country on the same footing

with other countries. See *Moore* v. *American Transportation Co.*, 24 How. 1, 39; *Norwich Company* v. *Wright*, 13 Wall. 104, 121. The rule should be applied having regard to the purposes it is intended to subserve and the reasons on which it rests.

The only question presented is whether appellant's wharfboat was a "vessel" at the time it sank. It was an aid to river traffic, but it was not used to carry freight from one place to another. It was not practically capable of being used as a means of transportation. It served at Evansville as an office, warehouse and wharf, and was not taken from place to place. The connections with the water, electric light and telephone systems of the city evidence a permanent location. It performed no function that might not have been performed as well by an appropriate structure on the land and by a floating stage or platform permanently attached to the land. It did not encounter perils of navigation to which craft used for transportation are exposed. There appears to be no reason for the application of the rule of limited liability. Many cases, involving a determination of what constitutes a vessel within the purview of the statute have been before the courts; but no decision has been cited, and we have found none, that supports the contention that this wharfboat was a vessel. Cf. *Cope* v. *Valette Dry Dock Co.*, 119 U. S. 625, 629; *The Robert W. Parsons*, 191 U. S. 17, 30; *Ruddiman* v. *A Scow Platform*, 38 Fed. 158; *Patton-Tully Transportation Co.* v. *Turner*, 269 Fed. 334, 337.

Decree affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.